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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 495

TRUCK DRIVERS LOCAL UNION No. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and GENERAL DRIVERS, WAREHOUSEMEN, HELPERS AND GAS STATION ATTENDANTS LOCAL UNION No. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Petitioners,

v.

ARTHUR J. GOLDBERG, Secretary of Labor, United States Department of Labor, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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October, 1961

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v.

ARTHUR J. GOLDBERG, Secretary of Labor, United States Department of Labor, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Your petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled cause on August 16, 1961.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Michigan (R. 55a-63a, Appendix G, *infra*, pp. 42a-52a)* is not reported. The opinion of the Court of Appeals for the Sixth Circuit (Appendix A, *infra*, pp. 1a-16a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals (Appendix B, *infra*, p. 17a) was entered on August 16, 1961. A timely petition for rehearing was denied on September 12, 1961 (Appendix C, *infra*, p. 18a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(a).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

1. The United States Constitution, Article I, Section 8, provides in pertinent part:

> The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

2. Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 521, provides:

> (a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the

* References prefixed "R" are to the printed Transcript of Record filed in the court below and in this Court.

facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

3. Section 9 of the Federal Trade Commission Act, 15 U.S.C. § 49, provides:

For the purposes of sections 41-46 and 47-58 of this title the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may in-

voke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of sections 41-46 and 47-58 of this title or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under sections 41-46 and 47-58 of this title at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

4. Section 10 of the Federal Trade Commission Act, 15 U.S.C. § 50, provides:

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under sections 41-

46 and 47-58 of this title, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to said sections, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his contro, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by sections 41-46 and 47-58 of this title to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses

of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

QUESTIONS PRESENTED

1. Whether, under Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, construed in light of the Fourth Amendment to the Federal Constitution, the Secretary of Labor must show that he has a reasonable belief of the necessity for an investigation into the internal affairs of a union as a prerequisite to judicial enforcement of an administrative subpoena duces tecum which is so broad as to constitute a complete seizure of the books and records of the union.

2. Whether Section 601 of the Labor-Management Reporting and Disclosure Act of 1959 authorizes the Secretary of Labor to compel production of records which antedate the effective date of the Act.

3. Whether the Commerce Clause of the Constitution of the United States, Article I, Section 8, confers upon the Congress power to regulate and interfere with the exclusively internal affairs of labor organizations, the relationships of such associations with their members and with other labor organizations, matters which have no substantial relationship to labor-management relations or the collective bargaining activities of such organizations.

STATEMENT

This case involves important questions concerning the power of the Secretary of Labor to secure judicial enforcement of an administrative subpoena duces tecum issued on his authority in connection with an investigation he was making under the authority of the Labor-Management Reporting and Disclosure Act of 1959.

It will be recalled that this statute was the product of two quite different and unrelated campaigns in the field of federal control of collective bargaining and labor unions. The part here relevant concerns the effort to regulate internal union affairs through federal legislation. The second part of the statute was an amendment or repealer of certain provisions in the Labor Management Relations Act of 1947, the so-called Taft-Hartley Act.

The questions raised by the present proceeding all derive from the extraordinary power conferred by the statute upon the Secretary of Labor by Section 601, which provides:

> (a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto.

The exception of title I removes from the Secretary's jurisdiction the "Bill of Rights of Members of Labor Organizations," which is contained in that part of the

Act. The other exception is, of course, the Taft-Hartley amendments. All the remaining provisions of the act, Titles II through VI, are brought within the power of the Secretary of Labor under Section 601.

Acting pursuant to this section, John L. Holcombe, Commissioner of the Bureau of Labor-Management Reports, who had been authorized to exercise the powers of the Secretary of Labor, signed and issued on September 19, 1960, a subpoena duces tecum addressed to the officer in charge of the records of petitioner Local 299. (Appendix D, *infra*, pp. 19a-20a). A like subpoena was issued the same day addressed to the officer in charge of the records of petitioner Local 614. (Appendix E, *infra*, pp. 21a-22a). The first paragraph of the subpoenas, tracing the language of Section 601, recites that they are issued in connection with an investigation "involving a determination whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 et seq., except Title I or amendments made by the Act to other Statutes." The second paragraph requires the production of virtually all the records of the two organizations, in the following language:

> "All records for the period from January 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secertary of Labor for Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America may be verified, explained or clarified and checked for accuracy and completeness, in connection with all items referred to or listed in such report and all

items omitted or excluded therefrom which are relevant thereto and are required to be included in said reports, such records to include but not be limited to, vouchers, worksheets, ledgers, audit reports, records of receipt of dues, fees, assessments, fines and work permits, accounts receivable, accounts payable, journals, journal vouchers, check register, payroll register and related records, and all books of accounts of Local 614, related to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or other local unions affiliated with said International, including all bank statements, cancelled checks, check stubs, audit reports, financial reports, records of loans, records of mortgages, records of ownership of property real and personal, deeds, records of trusts, records of investments, and all correspondence and memoranda pertaining to receipts and disbursements."

On October 26, 1960, the officers of the petitioners in charge of records appeared before the respective hearing officers named in the subpoenas. Both union officers declined to comply with the terms and demands of the subpoenas for the production of records in view of certain legal questions concerning the power of the Secretary to compel such disclosure. Specific reference was made to the paramount question of the constitutionality of the Act.

On October 27, 1960, representatives of the Secretary of Labor filed, in the District Court for the Eastern District of Michigan, a petition for an order compelling the unions to produce the documentary evidence called for by the subpoenas. This procedure was taken under Section 601(b) of the LMRDA, which incorporates the provisions of Sections 9 and 10 of the Federal Trade Commission Act of 1914 as amended. Section 9 of that Act confers jurisdiction upon the United

States District Courts, in case of contumacy or refusal to obey an administrative subpoena, to issue an order requiring compliance with the subpoena.

The District Judge (Kaess) denied the petition of the Secretary of Labor for an order of compliance. The Court found that "the Secretary of Labor has never indicated that there was any complaint or charge either filed with or pending before him involving the respondents. Nor does the Secretary of Labor or his duly authorized and delegated subordinates, indicate or intimate that there has been, could be, or do they have any reason to believe any violation of law has been committed or contemplated by the respondent unions." (R. 55a). Turning to the language of Section 601, providing that the Secretary shall have power to subpoena "when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act," the District Judge held that, before issuance of any judicial order of compliance with a subpoena, there must be some showing made on the issue of necessity. He concluded that the statute did not authorize the Secretary, acting so far as the Court knew purely by whim or caprice, to have enforcement of these subpoenas which are "so broad that they constitute a complete seizure unrelated to any recorded purposeful investigation." (R. 62a).

While the District Court's holding squarely rested upon an interpretation of the statute, he was not unmindful of the presence of serious constitutional questions underlying the interpretation of the Act and adverted to them in his opinion. Because his conclusion on the meaning of the statute was dispositive of the case, it was unnecessary for him to decide any of the constitutional questions posed by the unions.

Nor was it necessary for the District Court to deal with the additional issue of the power of the Secretary of Labor to subpoena records antedating the effective date of the Labor-Management Reporting and Disclosure Act. The statute was approved on September 14, 1959. Both subpoenas in this case demanded the production of documents all the way back to January 1, 1959. The unions contended that this retroactive demand exceeded the power conferred by the Act.

The Court of Appeals for the Sixth Circuit reversed. The appellate court held that the Secretary's subpoena should be enforced without any showing whatsoever as to necessity: "The statute was sufficient authority for him to proceed." (Appendix A, *infra*, p. 10a). By this, the court meant that there could and should be no judicial examination of the Secretary's reason or purpose or motive in singling out any particular union as the target of his subpoena power. The Sixth Circuit believed this Court's decision in *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, and *United States* v. *Morton*, 338 U.S. 632, were dispositive of the issue.

The Sixth Circuit did not blink the breadth of the subpoenas in this case, saying only that all the records which were sought might be relevant to some possible violation of the LMRDA. Since the scope of the investigation was presumably as broad as the full scope of the Act, no reference having been made to any specific rule or provision, there could be no denying the power to compel the indiscriminate production of all the records which were sought by these subpoenas.

The Court of Appeals dismissed petitioners' argument that the Labor-Management Reporting and Dis-

closure Act is unconstitutional, as outside the scope of permissible federal regulation under the Commerce Clause, to the extent that it interfered with the internal affairs of voluntary unincorporated associations. Significantly, the Court of Appeals did not make an independent decision on the issue of the scope of Congressional power in this matter, but contented itself with relying completely and exclusively upon certain Congressional findings, which were adopted as part of the LMRDA, that the internal affairs of labor organizations were a responsibility of the Federal Government.

The Court of Appeals simply ignored petitioners' argument that these subpoenas were defective because they demanded production of records most of which antedate the law on which the subpoenas purport to rest.

REASONS FOR GRANTING THE WRIT

1. The scope of the subpoena power conferred upon the Secretary of Labor by Section 601 of the Labor-Management Reporting and Disclosure Act is a novel and serious question requiring the construction of this important new legislation by this Court.

A. The primary question posed by this case requires interpretation of the recently enacted Labor-Management Reporting and Disclosure Act of 1959, referred to herein as the LMRDA. The Secretary of Labor contends that Congress has given him the unlimited power to subpoena the books, records and files of any labor organization in the country, without any reason or showing of necessity, for the purpose of determining whether or not that organization has violated or is about to violate the LMRDA. Your petitioners contend that Congress has not granted such arbitrary

power to one government official, but rather has limited the subpoena power to those situations in which there appears some reasonable necessity for the seizure of a union's books, files and records.

Perhaps the best way to reveal the full dimensions of this dispute is to recite from an official publication of the Department of Labor showing that, as of 1959, there were 184 national and international unions and 78,110 locals in the United States. Directory of National and International Labor Unions in the United States, 1959, Bulletin No. 1267, United States Department of Labor, December 1959. The Secretary takes the position that he can select at will any one of these more than 78,000 unions and subject it to the harassment and annoyance of an official subpoena to turn over its books, records and files. The Secretary argues that, under the statute, he can base his choice of which labor group he will seize as his target on any motive, even mere whim or caprice, that he has complete, arbitrary and unreviewable power to decide where and when to exercise his subpoena power.

No one familiar with the history of the rise and evolution of organized labor can be unappreciative of the danger to the labor movement in this claim of arbitrary power. The use of the powers of government to harass and destroy the effectiveness of unions is a well-known and not completely closed chapter in labor history. Section 601 of the LMRDA is only a new addition to the possible legal weapons which could be turned against a particular union. Not only is there the disruptive effect of the seizure of the union's files, but the statute specifically permits the Secretary to "report to interested persons" on any matter which he deems appropriate after such an investigation. No

confidence or private matters are given protection. Even the membership lists of unions, traditionally entitled to be held in strictest privacy, are subject to compulsory disclosure to the Secretary, and through him, to "interested persons."

In the minds of some, the dangers of abuse of the powers of Section 601 in a calculated way inimical to labor may seem a remote possibility in light of the present incumbency of the office of Secretary of Labor. It is not necessary or even appropriate to consider the matter with any particular Secretary of Labor in mind. Presidential Administrations are changed at least once every four years and Cabinet posts more frequently. It is possible, therefore, to conceive of a President coming into office with a firm view that all labor groups or some particularly aggressive labor groups are not functioning in the public interest. Such an Administration could even be publicly committed to the destruction and downfall of certain labor leaders. The Secretary of Labor, in such a situation, would have an extraordinary weapon in Section 601 to accomplish this purpose, if the interpretation urged by the Government in this case is adopted. It is utterly unrealistic to assume that Section 601 will inevitably be administered by persons impartially favorable to all labor groups.

The conclusion that Congress has given such power to the Secretary of Labor is, however, impossible simply on the face of the statute. Section 601 states that the Secretary "shall have power *when he believes it necessary* in order to determine whether any person has violated or is about to violate any provision of this Act . . ." (Emphasis added). The Government would ignore the language requiring a finding of necessity.

The Government would read Section 601 as if there was no condition whatsoever on the Secretary's power. But Congress did insert a condition. There was full realization of the dangers inherent in the unlimited subpoena power which the Secretary now claims.

The legislative history reveals that the original bills in the Senate and the House of Representatives conditioned the subpoena power on the existence of probable cause to believe that any person or labor organization had violated the Act. S. 505, 86th Cong., 1st Sess.; H.R. 8400, 86th Cong., 1st Sess. The probable cause requirement was eliminated prior to passage of the Act and the present language of Section 601 was substituted. The argument of the Government and the reasoning of the Sixth Circuit blindly follow the logical fallacy that, because Congress removed the more onerous condition of probable cause, it must therefore have eliminated all possible restraints upon the powers of the Secretary. Congress clearly retained a provision which establishes as a prerequisite the existence of a reasonable belief of the necessity for a particular investigation. To completely ignore that part of Section 601 is to uphold a power immeasurably greater than that actually conferred by Congress.

The Report of the Senate Committee on Labor and Public Welfare makes it completely clear that the probable cause requirement was taken out of the bill because it was believed too stringent.

> "Probable cause means more than a mere suspicion that the act has been violated. To have probable cause, a person must have such evidence as would lead the ordinary prudent man to believe that the act has been violated. Consequently, every

> time he commenced an investigation the Secretary could be dragged into court until the question of probable cause had been decided. . . . Our amendment rewrites this section to give the Secretary investigatory power when he believes it necessary in order to determine whether a violation has occurred or is about to occur." S. Rep. No. 187, 86th Cong., 1st Sess., U.S. Code Congressional & Administrative News, 86th Cong., 1st Sess. 2395-96.

Clearly the probable cause test was thought to be too strong and likely to lead to protracted litigation. The concept of probable cause has been encrusted with many sub-meanings through a lengthy legal evolution. But there is nothing in this legislative history which indicates that Congress abandoned any restraint on the Secretary's subpoena power.

The Government is fond of the phrase "dragged into court" which appears in the Senate Report quoted above. They argue from this that there was a clear Congressional intention that there should be no judicial examination of the actions of the Secretary, since Congress did not want him dragged into Court. This argument, wrenching language out of context, ignores the thrust of the quoted portion of the report, which goes to the quality of the probable cause test and not to the elimination of any judicial power to scrutinize the actions of the Secretary when the Secretary is not dragged into court but comes to court to seek the aid of the judicial power in enforcing one of his subpoenas.

Notwithstanding the argument of the Government and the decision of the Sixth Circuit based upon that argument, it is possible to establish a standard which the Secretary must meet that is qualitatively and quan-

titatively different from the probable cause requirement in criminal law. At the very least, the courts are entitled to know on what basis the Secretary selected any one particular labor union from the more than 78,000 groups in the country as the target of the subpoena he seeks to have enforced. But these matters go to the merits of the proper statutory interpretation and ought not to be explored in this Petition.

B. Aggravating the Secretary's assertion that his power to issue subpoenas is not limited under the statute is the scope of the subpoenas issued in this case. The District Court aptly described the effect as a "complete seizure." The breadth of the subpoenas is derived from the utter failure of the Secretary to specify what, if any, provision of the LMRDA was the subject of the investigation. Rather the Secretary claims the power to inquire indiscriminately into any and all of the provisions of the LMRDA included under the Section 601 authorization. The result is the kind of subpoenas now before the Court in which there is sought a complete seizure of the books, files and records of the unions.

It is not necessary to recite here in any detail the broad scope of the LMRDA. The Act establishes fixed rules for the terms of office of union officers, lays down explicit regulations for the conduct of campaigns and elections, and specifies the right to vote. Section 401, 29 U.S.C. § 481. The Act sets up certain extremely general standards of fiduciary responsibility of the officers and representatives of labor organizations. Section 501, 29 U.S.C. § 501. A whole battery of reporting requirements concerning the organizational structure and the financial transactions of labor organizations are provided in Section 201, 29 U.S.C.

§ 431. These are reinforced by stiff criminal provisions for making false statements in Section 209, 29 U.S.C. § 439. Section 301, 29 U.S.C. § 461, establishes complex procedures where a trusteeship relationship exists between two labor groups. Virtually every aspect of the internal affairs of a labor organization is relevant to some provision of the LMRDA, as to which the Secretary asserts an unqualified power to subpoena.

If, on the other hand, as contended by the petitioners in this case, the Secretary is empowered to effect compulsory disclosure only when he has some reasonable basis as to the necessity to do so, in most situations there will be a specific portion of the LMRDA which is the subject. In that event, the breadth of the subpoena can appropriately be limited to the materials relevant to that particular inquiry. There would be no occasion for the complete seizure sought to be effected by the Secretary under the subpoenas in the present case.

C. The Sixth Circuit rested its decision largely on the belief that this Court's decision in *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1946), was dispositive of the present controversy. This conclusion is manifestly a misreading of the decision in *Oklahoma Press*. That case, which arose under the Fair Labor Standards Act, could not and did not speak to the primary question in this case, which involves the construction of a statute, the LMRDA, that was not passed until 13 years later.

Petitioners in *Oklahoma Press* argued, *inter alia*, that the Fourth Amendment to the United States Constitution would be violated if the subpoenas in that case were enforced. From their constitutional argument,

the petitioners there attempted to convince the Court that the statute in question did not authorize the issuance of the subpoenas. The Court gave short shrift to the theory concerning the intent of Congress since it was found that the Fair Labor Standards Act on its face expressly granted the powers which the petitioners claimed had been withheld: "the statute's language leaves no room to doubt that Congress intended to authorize just what the Administrator did and sought to have the courts do." *Id.* at 197-98. The case was said to rest on the "most explicit language" of the intention of Congress. The Court then went on to reject the claimed violation of the Fourth Amendment. This decision obviously cannot control the interpretation of a *different* statute with *different* provisions and a *different* purpose.

It is also important to note that this Court's disposition of the constitutional issue in *Oklahoma Press* was largely attributable to the fact that the petitioners were corporations. Indeed, the discussion virtually begins and ends with emphasis of this fact:

> "Historically private corporations have been subject to broad visitorial power, both in England and in this country. And it long has been established that Congress may exercise wide investigative power over them, analogous to the visitorial power of the incorporating state, when their activities take place within or affect interstate commerce. Correspondingly it has been settled that corporations are not entitled to all of the constitutional protections which private individuals have in these and related matters." *Id.* at 204-05.

Later applying the principles discussed in the opinion to the facts of the cases, the analysis re-emphasizes the

fact that petitioners were incorporated entities. *Id.* at 209-10.

Needless to say, the present case does not involve corporate petitioners. The labor unions involved are simply voluntary unincorporated associations of individuals. Therefore, even on the discussion of the application of the Fourth Amendment, the *Oklahoma Press* decision could not be dispositive of any question in this case.

It is relevant to stress here that the question of statutory interpretation presented by this case cannot be viewed wholly apart from the limitations of the Constitution. That such limitations exist has been recognized by this Court many times. In *Oklahoma Press*, the Court stated that the core of the constitutional problem has been the balancing of the public interest against private security. *Id.* at 203. This might also be summed up as a requirement of reasonableness: "Necessarily, as has been said, this cannot be reduced to formula; for relevancy and adequacy or excess in the breadth of the subpoena are matters variable in relation to the nature, purposes and scope of the inquiry." *Id.* at 209.

There is a constitutional dimension to the present case. If certiorari is granted, petitioners will argue that the Court should be aware of the basic constitutional principles governing the eternal tension between public interest and private security. This argument would be directed toward a conclusion that Congress lacked any power under the Constitution to grant the visitorial rights claimed by the Secretary of Labor. Rather the argument would shape and color and guide the interpretation and construction of the permissible use of compulsory process under Section 601.

A word should also be said concerning the reliance of the court below on the decision of this Court in *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950). The Sixth Circuit did not characterize this decision as dispositive in the instant proceeding, but did place some considerable emphasis upon it. The issues in *Morton Salt* concerned the power of the Federal Trade Commission under the Federal Trade Commission Act. There was outstanding against Morton Salt a cease and desist order which the Court of Appeals for the Seventh Circuit had affirmed. The principal issue raised concerned the power of the FTC to issue a subpoena to determine whether the decree was being obeyed. The company contended that the Commission had been ousted of jurisdiction when the Seventh Circuit entered its judgment. This Court held that the Commission retained power to investigate. The Court also rejected an elaborate argument based on the structure of the Federal Trade Commission Act. Finally, the Court concluded that there was no violation of the Fourth Amendment, reiterating that "corporations can claim no equality with individuals in the enjoyment of a right to privacy." *Id.* at 652. As in Oklahoma *Press,* the fact that the inquiry was directed at a corporation was deemed extremely important in the analysis of the constitutional issue.

Obviously neither *Morton Salt* nor *Oklahoma Press* even begins to deal with the novel and important question of the meaning of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959.

D. A recent decision of the Court of Appeals for the District of Columbia provides current, forceful witness to the vitality of the Fourth Amendment limitations on the investigative power of federal agencies.

In *Montship Lines, Ltd.* v. *Federal Maritime Board,* decided June 30, 1961, the Court of Appeals held that an order of the Maritime Board violated the Fourth Amendment because it was too sweeping and general in scope. (This opinion is reproduced for the convenience of the Court in Appendix F, pp. 23a-41a). The court held that the order in question, issued under Section 21 of the Shipping Act, was within the scope of statutory authority of the Maritime Board. But the order was deemed fatally defective for failure to be more explicit as to the purpose of the investigation. Lacking a sufficient statement of purpose, the court concluded that it had no standard against which to determine the relevancy of the information demanded. Therefore, the action of the Board was unreasonable and its order was vacated. *Contra,* see recent Memorandum reproduced for the convenience of the Court in Appendix H, p. 53a.

The present case is closely parallel to the *Montship Lines* case. Here the Secretary purports to be acting under all of his statutory powers at once. Nothing more explicit is known about his purpose than that. As in *Montship Lines,* there is no discernible standard against which to measure the relevancy of any of the materials demanded. In this situation, the Court of Appeals for the District of Columbia held that there was a violation of the Fourth Amendment.

The same order of the Maritime Board tested in *Montship Lines* was upheld by the Second Circuit in another proceeding brought to challenge the order. *Kerr Steamship* v. *United States,* decided November 17, 1960. (See Appendix F, *infra,* pp. 23a-41a). That decision is presently pending on petition for certiorari No. 29 this Term. In view of the divergent results between *Kerr Steamship* and *Montship Lines,* it seems likely that certiorari will be granted. It should

be noted that the Second Circuit did not discuss the Fourth Amendment question and its decision is not in conflict with the District of Columbia Circuit on that issue. In disposing of these cases, since the constitutional issue is clearly raised, this Court may undertake to review the principles of the Fourth Amendment, discussed in *Oklahoma Press Publishing Co.* v. *Walling, supra,* and *United States* v. *Morton Salt, supra.* As has already been indicated, the limitations of the Fourth Amendment are vitally important to the interpretation to be given to Section 601 of the LMRDA. The interaction of these recent cases suggests that all of them should now be brought before this Court for decision.

E. The importance of the question presented by this broadside effort to compel disclosure under Section 601 of the LMRDA is apparent on the face of the discussion. In addition, however, we may stress several facts which underscore the vital necessity for review by this Court.

As has already been mentioned, the issues posed here affect more than 78,000 labor organizations in the United States. Any one of them could be made the subject of one of the Secretary's swooping investigations. There are more than 18 million members of these labor organizations with substantial rights at stake in the present litigation.

In the event that this Court should fail to consider the question in the present proceeding, it is unlikely that the matter would ever be litigated again. Section 601 of the LMRDA incorporates by reference the penalty provisions of the Federal Trade Commission Act. Section 10 of the latter act makes it a crime, punish-

able by a fine of not less than $1,000 nor more than $5,000, or by imprisonment of not more than one year, or both, for any person who neglects or refuses to produce evidence in obedience to a subpoena. Petitioners seriously weighed the risks of these penalty provisions before deciding to decline to obey the subpoenas in this case. It was decided that the chance of heavy penalty was not likely in the first case to test the Secretary's power. In the future, however, there is virtually no likelihood that any union officer can take the chance of the severe criminal penalties in order to challenge the authority of the Secretary. Therefore, it is urgent that this Court consider the statutory question in the present proceeding.

If any further evidence is needed of the importance of the issues involved, it is provided by the first sentence of the opinion of the court below:

> "This case involves important questions concerning the right of the Secretary of Labor to secure judicial enforcement of subpoenas duces tecum issued by him and served on union officers in connection with an investigation he was attempting to make under the authority of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 521." (Appendix A, *infra*, p. 1a).

The Secretary of Labor and the Department of Justice also concurred in the view that the questions in this case were matters of special importance. In the Court of Appeals, the Government moved for advancement of the hearing of argument. The Government represented to the Court of Appeals "that these are questions, the early resolution of which by this Court is of paramount importance to the Secretary of Labor with respect to the execution of the investigatory du-

ties placed on him by Congress in Section 601 of the LMRDA."

The conclusion is plain. The question presented here is serious and substantial, amply justifying the invocation of this Court's power to review on writ of certiorari.

2. The attempt by the Secretary of Labor to compel production of records which antedate the effective date of the Labor-Management Reporting and Disclosure Act raises an important question concerning the scope of the Act.

Both subpoenas issued under the authority of the Secretary of Labor in this case ordered the unions to produce "all records for the period from January 1, 1959 to the present date." The Labor-Management Reporting and Disclosure Act did not become effective under September 14, 1959. Thus, the action of the Secretary of Labor in this proceeding constitutes an attempt to seize records for more than a nine month period prior to enactment of the LMRDA. In effect, the Secretary has attempted to make the statute apply retroactively to the beginning of the calendar year in 1959.

Petitioners have protested throughout these proceedings that the subpoenas were illegally broad because of their purported application to events which preceded the statute. In the District Court, because of the District Judge's conclusion that the subpoenas were fatally defective, he expressly stated that he need not reach this question. While the Court of Appeals for the Sixth Circuit upheld the power of the Secretary, that court simply ignored the contention that the subpoenas were defective because of the demand for records of the period prior to September 14, 1960. This default

was expressly raised again in the Court of Appeals by a petition for rehearing, but to no avail.

With such a sweeping statute imposing numerous rules dealing with the internal affairs of labor unions, rules backed up in many instances with stern criminal penalties, it is obviously highly important to fix the effective date of the law. The normal rule that a new law, adopted by a legislature, becomes effective only prospectively from the date of enactment is placed in doubt by the action of the Secretary in this case. The only explanation of the subpoenas is that the Government plans to apply to LMRDA as of January 1, 1959.

The attempt to subpoena records for the nine months prior to the effective date of the statute is in plain violation of the terms of the Act. The subpoenas demand all records whereby the organizational report and the financial report of each of the labor unions can be verified for accuracy and completeness. These reports are governed by Section 201 of the Act, 29 U.S.C. § 431. Section 207(b), 29 U.S.C. § 437(b), makes it quite plain that Congress intended no retroactive application of the statute:

> "Each person required to file a report under section 201(b), 202, 203(a), or the second sentence of 203(b) shall file such report within ninety days after the end of each of its fiscal years; except that where such person is subject to section 201(b), 202, 203(a), or the second sentence of 203(b), as the case may be, for only a portion of such a fiscal year (*because the date of enactment of this Act occurs during such person's fiscal year* or such person becomes subject to this Act during its fiscal year) such person may consider that portion as the entire fiscal year in making such report." (Emphasis added).

This reveals with absolute clarity that Congress intended to cover only that portion of 1959 which came after the effective date of the statute.

The subpoenas issued by the representative of the Secretary fly in the face of this unambiguous statement by Congress on the non-retroactive application of the LMRDA. This presents an important and serious question concerning the Act which ought to be resolved by this Court.

3. The question of Congressional power under the Commerce Clause to regulate the internal affairs of labor unions is a novel and serious question of constitutional law which has not been and which ought to be resolved by this Court.

The great cases in this Court concerning the power of Congress to enact the "New Deal" legislation have receded into the past, but it remains true today as always that the power of Congress to regulate and control commerce is limited by the Constitution of the United States. In undertaking to legislate union democracy, Congress has made an unprecedented attempt to exercise its power under Article I, Section 8, "To regulate Commerce . . . among the several States." Petitioners contend that the Labor-Management Reporting and Disclosure Act is, so far as pertinent here, patently unconstitutional. But certainly it must be agreed that the question of Congress' power to regulate by *federal* law the internal affairs of more than 78,000 voluntary unincorporated associations of workingmen across the country presents a novel and serious question of constitutional law which has not been and which ought to be resolved by this Court.

It has become so common-place to consider labor regulation as within the permissible legislative reach

of Congress that it is easy to fail to distinguish what aspects of labor law are properly within the federal sphere and the jurisprudential theory which justifies the exercise of federal power.

First, it is clear beyond any question that labor organizations are not a part of "Commerce . . . among the several States." Even labor-management relations have never been found to be a part of interstate commerce. The sole and exclusive justification for the exercise of federal power in the regulation of labor-management affairs has been the possibility that industrial strife might interfere with and obstruct the flow of interstate commerce. Only because it might *affect* commerce was the subject of collective bargaining held within the power of Congress to control.

This is abundantly clear in the great case upholding the National Labor Relations Act of 1935:

> "Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control." *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937).

This Court, in *Jones & Laughlin*, stressed the possible stoppage of production by industrial strife as having a serious effect on commerce, an "immediate and catastrophic" effect. *Id.* at 41. The Court declared that experience had abundantly demonstrated that recognition of the right of employees to self-organization and to have representatives of their own choosing for purposes of collective bargaining is often an essential of industrial peace.

This Court had earlier employed precisely the same reasoning to uphold the Railway Labor Act, which regulated labor-management relations in the railroad industry. Labor affairs were not themselves found a part of interstate commerce. Rather, it was the potential effect of industrial disputes on commerce which was determinative.

> "The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders." *Virginia Ry. Co.* v. *System Federation No.* 40, 300 U.S. 515, 553 (1937).

See also *United States* v. *Darby,* 312 U.S. 100 (1941), upholding the Fair Labor Standards Act.

Within the past few years, this Court has had occasion to reiterate the constitutional basis for Congressional regulation of labor-management relations. Upholding the provision of the Railway Labor Act permitting the union shop, this Court declared:

> "Industrial peace along the arteries of commerce is a legitimate objective: and Congress has great latitude in choosing the methods by which it is to be obtained." *Railway Employees Dep't AFL* v. *Hanson,* 351 U.S. 225, 233 (1956).

The opinion of the Court sustaining Section 301(a) of the Labor-Management Relations Act of 1947 stated that "the power of Congress to regulate these labor-management controversies under the Commerce Clause is plain." *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 457 (1957).

Even the decisions of this Court which held constitutional the non-communist affidavit provision of Section

9 (h) of the Labor-Management Relations Act of 1947 rested squarely on the power of Congress to promote industrial peace and thereby protect the flow of commerce.

> "There can be no doubt that Congress may, under its constitutional power to regulate commerce among the several States, attempt to prevent political strikes and other kinds of direct action designed to burden and interrupt the free flow of commerce." *American Communication Ass'n* v. *Douds*, 339 U.S. 382, 390 (1950).

In short, every previous constitutional test of an act of Congress in matters of interest to labor organizations has been sustained solely on the ground that the regulated affairs might burden or obstruct the flow of interstate commerce. Collective bargaining and labor-management relations are properly within the reach of Congress only because of the possible impact of industrial disputes on interstate commerce. It has never been held that labor organizations are in and of themselves a part of interstate commerce.

Neverthless, Congress in 1959 enacted a federal law, grounded solely on the commerce power, which regulates and controls the internal affairs of labor unions. The purpose of the statute was not to prevent industrial strife which might burden and obstruct interstate commerce. The purpose was simply to impose, under the aegis of federal law, a guaranteed form of union democracy on all 78,000 labor organizations. Professor Archibald Cox, whose greatly influential role in shaping the Labor-Management Reporting and Disclosure Act need not be recounted here, summed up the matter well:

> "An individual worker gains no human rights by substituting an autocratic union officialdom for

> the tyranny of the boss. Only a democratic union, sensitive to the rights of minorities, can help men achieve the ideals of individual responsibility, equality of opportunity, and self-determination." Cox, *The Rule of Law in Preserving Union Democracy*, 72 HARV. L. REV. 609, 610 (1959).

Let it be conceded that the ideals of individual responsibility, equality of opportunity and self-determination are noble ones. Let it even be assumed that they are the proper subject of legislation. But that does not make them a permissible subject for *federal* legislation. In a federal government, with limited powers, the Constitution authorizes Congress to legislate only, in this sphere, with respect to interstate commerce. Union democracy, sensitive to the rights of minorities, has nothing to do with interstate commerce. However praiseworthy one might, or might not, consider the motives of Congress, it remains an unalterable fact that the internal affairs of labor unions are not interstate commerce and have no discernible effect upon interstate commerce.

One might urge that Congress could, with equal or better justification, enact laws regulating the domestic lives of workingmen on the theory that a laborer whose homelife is not happy will certainly be less efficient and productive at work. The sharp effects of a flaw in the serenity of a marriage have been amply studied; no doubt the promotion of this form of domestic tranquility could be a great benefit to commerce. So, too, such other annoyances as a man's democratic rights in his church, his lodge or club could be brought before Congress to regulate in the interest of protecting interstate commerce. These suggestions, it is hoped, will immediately appear as clearly beyond the commerce power. So, too, are the internal affairs of labor unions.

The issue is clearly and sharply posed by the present case through the assertion by the Secretary of Labor of unlimited power to investigate the domestic affairs of any labor union. The subpoena in this case was aptly described by the District Court as constituting a "complete seizure" of the books and records of petitioners. The alleged purpose of the subpoena is nothing less than a broadside investigation to see whether *any* provision of the Act has been or is about to be violated. The Secretary claims to have nothing specific in mind. He just wants to pry into every facet of the internal affairs of these unions. There is not and cannot be any reasonable relationship between such unbridled snooping and Congress' power to regulate commerce among the several States.

Even Congress, adopting the LMRDA, attempted weakly to tie its comprehensive statute to the flow of commerce:

> "... in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, *particularly as they affect labor-management relations.* Section 2(a), 29 U.S.C. § 401(a). (Emphasis added).

The attempt to relate the internal affairs of unions to labor-management relations, in a manner unspecified and impossible of specification, does not save this from being one of the major Congressional non-sequiturs of all times.

Both the Sixth Circuit and the Government have found considerable refuge in the further declaration of Congress that "the relation between employers and labor organizations and the millions of workers they rep-

resent have a substantial impact on the commerce of the Nation." Section 2(a), 29 U.S.C. § 401(a). It is highly doubtful that this declaration has anything to do with the internal affairs of labor unions. The Government, finding some magical powers in the use of the plural "relations" argues that it does and, apparently, the Sixth Circuit agreed.

The point is, simply, that even if Congress had said it plainly and unambiguously, the mere statement will not make it so. Congress' celebrated investigations did not determine the impact of internal union affairs upon the commerce of the Nation. That was not their purpose and that was not their consequence.

The matter is more accurately stated in the principal finding by Congress:

> "The Congress finds that, *in the public interest*, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid and protection." Section 2(a), 29 U.S.C. §401(a). (Emphasis added).

This finding is the closest to being accurate. Undoubtedly the passage of the LMRDA can be attributed to varying views among its proponents of what was "in the public interest." But the inescapable fact is that Congress has no power whatsoever to legislate "in the public interest." Its prior enactments have not been illustrative of a responsibility of the Federal Government to protect employees' rights, but of a federal power to regulate interstate commerce.

The LMRDA is the result of an erroneous view among Congressmen that they have the general power to legislate in the public interest and the specific responsibility to protect employees' rights. Only if this

were true could the comprehensive scheme of controls imposed on labor organizations and their internal affairs be upheld. Obviously no such power exists.

Enough has been said surely to demonstrate that the scope of Congressional power to enact the Labor-Management Reporting and Disclosure Act of 1959 is an important and substantial question of constitutional law which ought to be resolved by this Court. The Sixth Circuit faced the issue but meekly bowed to Congress' findings. In doing so, the Court of Appeals purported to be following this Court's decision in *Communist Party of the United States of America* v. *Subversive Activities Control Board,* 367 U.S. 1 (1961). But this Court was there dealing with a legislative finding on a pure issue of fact. Here the definition of interstate commerce is at stake. The issue is primarily legal, entirely constitutional. It would be total judicial abnegation to bow unquestioningly to a bare assertion by Congress, even if one were made, that the internal affairs of labor unions are interstate commerce. On a matter of this magnitude, it is manifest that this Court should hear and determine the questions presented.

CONCLUSION

For the foregoing reasons, we respectfully submit that this petition for writ of certiorari should be granted.

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October, 1961

APPENDIX A

Filed. Aug. 16, 1961. Carl W. Reuss, Clerk

No. 14533

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ARTHUR J. GOLDBERG, Secretary of Labor, United States Department of Labor, *Petitioner-Appellant*,

v.

TRUCK DRIVERS LOCAL UNION NO. 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, and GENERAL DRIVERS, WAREHOUSEMEN, HELPERS, AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, *Respondents-Appellees*.

On Appeal from the United States District Court for the Eastern District of Michigan, Southern Division.

Decided August 16, 1961.

Before: CECIL, WEICK and O'SULLIVAN, Circuit Judges.

WEICK, Circuit Judge. This case involves important questions concerning the right of the Secretary of Labor to secure judicial enforcement of subpoenas duces tecum issued by him and served on union officers in connection with an investigation he was attempting to make under the authority of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. (Supp. I) 521.

The union officers appeared in response to the subpoenas, challenged the right of the Secretary to make the investigation and refused to produce the records called for in view

of legal questions which the unions and their counsel believed were involved including the constitutionality of certain sections of the Act providing for the issuance of the subpoenas. The union officers had custody of the records subpoenaed and there was no claim of any physical inability on their part to produce them.

The Secretary filed a petition in the District Court for enforcement of the subpoenas, which was denied on the ground that the Secretary had made no showing as to necessity for the investigation and because the subpoenas were too broad.

It appeared on the face of the subpoenas that they were issued in connection with "an investigation by the Bureau of Labor-Management Reports [1] involving a determination whether any person has violated any provision of the Act." The subpoenas called for the production of the following records:

> All records for the period from January 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secretary of Labor for Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America may be verified, explained or clarified and checked for accuracy and completeness, in connection with all items referred to or listed in such report and all items omitted or excluded therefrom which are relevant thereto and are required to be included in said reports, such records to include but not be limited to, vouchers, worksheets, ledgers, audit reports, records of receipt of dues, fees, assessments, fines and work permits, accounts receivable, accounts payable, journals, journal vouchers, check register, payroll register and related records, and all books of accounts of Local 614,

[1] The Bureau was the duly authorized representative of the Secretary.

> related to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or other local unions affiliated with said International, including all bank statements, cancelled checks, check stubs, audit reports, financial reports, records of loans, records of mortgages, records of ownership of property real and personal, deeds, records of trusts, records of investments, and all correspondence and memoranda pertaining to receipts and disbursements.[2]

No evidence was offered in the District Court. The record consisted of the petition for enforcement, the exhibits attached thereto and the unions' response which admitted the allegations of Paragraphs I to XI of said petition.

In the District Court, the unions contended that it was obligatory on the part of the Secretary to first establish probable cause for the investigation as a condition precedent to obtaining enforcement of the subpoenas by the court.

The District Court, in its opinion denying enforcement, did not expressly use the term "probable cause," but adopted words of like import which imposed a requirement at least as stringent, namely, that the Secretary establish a basis for the investigation. The court said that there must be some "reasonable foundation or valid purpose" rather than merely looking into the records of the union in the hope of turning up something. This, in effect, was a holding that the Secretary had no right merely to investigate, but was required first to establish a probable violation of the Act.

In this Court, the unions contended that as a prerequisite to judicial enforcement of a subpoena duces tecum the Secretary "must show that he has a reasonable belief of necessity [i.e., a reasonable basis] for the investigation."

The statute required the unions to maintain the records which were subpoenaed. It provided:

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[2] The subpoena for Local 610 was identical except for the name of the union and the date of appearance.

Every person required to file any report under this subchapter shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain. (29 U. S. C. § 436)

Power was granted to the Secretary to make an investigation by the following language:

INVESTIGATIONS BY SECRETARY; APPLICABILITY OF OTHER LAWS

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this chapter, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents) are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. [29 U. S. C. § 521(a)(b).]

The pertinent provisions of Section 9 and Section 10 of the Federal Trade Commission Act which were made applicable are set forth in footnote 3.

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[3] Section 9 of the Federal Trade Commission Act (15 U. S. C. 49) provides in pertinent part as follows:

DOCUMENTARY EVIDENCE; DEPOSITIONS; WITNESSES

For the purposes of sections 41-46 and 47-58 of this title the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examinations, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas and members and examiners of the commission may adinister oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

* * * * * *

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty

or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: PROVIDED, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Section 10 of the Federal Trade Commission Act (15 U. S. C. 50) provides in pertinent part as follows:

OFFENSES AND PENALTIES

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made any false entry or statement of fact in any report required to be made under section 41-46 and 47-58 of this title, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to said sections, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment. [29 U. S. C. § 521(a)(b).]

* * * * * *

The legislative history of the Labor-Management Reporting and Disclosure Act reveals that the original bills introduced in the House[4] and Senate[5] each granted power to the Secretary to make an investigation ony when he had probable cause to believe that any person or labor organization had violated any provision of the Act. The probable cause requirement, however, was eliminated from the Act as it was finally passed. The reason for deleting the probable cause requirement is set forth in the minority amendments adopted by the Senate Committee on Labor and Public Welfare. It is as follows:

> Section 106(*c*): The Secretary shall have the power and is directed when he believes it necessary in order to determine whether anyone has violated or is about to violate a provision of this bill to make investigations.
>
> As originally worded, this section would have given the Secretary the authority to investigate the books and records of persons reporting under the act only when he had probable cause to believe that a person had violated provisions of the act. On the surface, the term 'probable cause' would appear to give the Secretary all the investigatory power that he needed. But the words 'probable cause' would throw a monkey wrench in the Secretary's investigatory machinery. Probable cause means more than mere suspicion that the act has been violated. To have probable cause, a person must have such evidence as would lead the ordinary prudent man to believe that the act has been violated. Consequently, every time he commenced an

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[4] Section 601(a) of H. R. 8400, 86th Cong., 1st Session, known as Landrum-Griffin bill. The number of the bill which finally was passed by the House was H. R. 8342 in which the text of H. R. 8400 had been substituted.

[5] Section 106(c) of S. 505, 86th Cong., 1st Session, known as the Kennedy-Ervin bill. S. 1555 which incorporated a number of committee amendments to S. 505 was introduced by Senator Kennedy and referred to the Committee on Labor and Public Welfare.

investigation the Secretary could be dragged into court until the question of probable cause had been decided. Under nearly every statute requiring the filing of reports, such as the Internal Revenue Act and the Fair Labor Standards Act, the Administrator can conduct 'spot check' investigations unhampered by the 'probable cause' requirement. Our amendment rewrites this section to give the Secretary investigatory power when he believes it necessary in order to determine whether a violation has occurred or is about to occur. (U. S. Code Congressional & Administrative News—86th Congress, 1st Session 1959 pp. 2395, 2396)

After the bill had passed the Senate, it was sent to a Conference Committee which reported:

SECTION 601—INVESTIGATIONS

The Senate bill contains a provision which directs the Secretary to conduct an investigation when he believes it necessary in order to determine whether any person has, or is about to, violate the act, or any rule or regulation authorized by the act.

The House amendment directs the Secretary to make an investigation when he has probable cause to believe that any person has violated a provision of the act, other than title I.

The conference substitute is similar to the Senate bill, except that the investigation authority is permissive rather than mandatory, no investigation may be made with respect to violations of rules and regulations, and the investigation authority does not extend to title I.

The Senate bill also contains a provision authorizing the Secretary to report to interested persons concerning the facts required to be shown in reports and concerning the reasons for failure or refusal to file a report or any other matter he deems appropriate as a result of an investigation. The conference substitute adopts this provision. (U. S. Code Congressional & Administrative News—86th Congress, 1st Session 1959 p. 2508)

The legislative history of the Act is clear that Congress rejected the "probable cause" requirement because it might hamper the Secretary in the performance of his duties with respect to investigation which were imposed upon him by the Act. With such a requirement, each investigation would likely be met by a lawsuit in which the Secretary would be obliged to prove a probable violation of the Act or enforcement of subpoenas would be denied. Even if successful in his proof, the investigation by the Secretary might be delayed for months or years while the matter was being litigated in the courts. It seems to us that the court ought not to impose a condition, which Congress rejected, on the exercise of the right of the Secretary to investigate. Nor do we see any real difference between the rejected "probable cause" requirement and that of a "reasonable basis" for the investigation adopted by the District Court. While the disclosure sought must not be unreasonable or oppressive (*Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 208), this does not mean that the Secretary is obligated to establish a reasonable basis for his investigation. If the Secretary was in possession of facts establishing a probable violation he might never need to investigate. The purpose of the investigation authorized by Congress was to provide the means of discovery whereby the Secretary could determine whether the Act was being violated, or about to be violated.

All the statute required, in order for the Secretary to investigate, was that he "believe it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter."

In his petition for enforcement filed in the District Court, the Secretary alleged in paragraph six that he believed it was necessary to make the investigation to determine whether any persons violated or were about to violate the law. The unions in their response to the petition (Par. 1) admitted the allegations contained in paragraph six and certain other paragraphs of the petition.

In the absence of proof to the contrary, there is a presumption of regularity in the proceedings of a public officer. The burden is upon the party complaining to show otherwise. Cf. *Fahey* v. *Mallonee*, 332 U. S. 245, 254; *Mississippi Road Supply Co.* v. *Walling*, 136 F. 2d 391, 394 (CA 5); 42 Am. Jur. § 240 p. 680. The trial judge commented on the fact that the Secretary did not offer any evidence to establish the reason or basis for the investigation. In our opinion, the Secretary was not required to do so. The statute was sufficient authority for him to proceed. The purpose of the investigation appeared on the face of the subpoenas. The Secretary could not very well perform his statutory duty and determine whether the Act was being violated or about to be violated without making an investigation. Requiring the Secretary to first establish a probable violation of the Act, as a condition precedent to making an investigation, effectively stripped him of his power to investigate and prevented him from determining whether the Act was being violated or about to be violated. It virtually rendered the enforcement provisions of the Act nugatory.

We believe *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186 is dispositive of this issue. In upholding enforcement of a subpoena duces tecum issued by the Administrator of the Wage and Hour Division of the Department of Labor, the Court said:

> Congress has made no requirement in terms of any showing of 'probable cause'; and, in view of what has already been said, any possible constitutional requirement of that sort was satisfied by the Administrator's showing in this case, including not only the allegations concerning coverage, but also that he was proceeding with his investigation in accordance with the mandate of Congress and that the records sought were relevant to that purpose. . . .
>
> The result therefore sustains the Administrator's position that his investigative function, in searching out violations with a view to securing enforcement of

> the Act, is essentially the same as the grand jury's, or the court's in issuing other pretrial orders for the discovery of evidence, and is governed by the same limitations. These are that he shall not act arbitrarily or in excess of his statutory authority, but this does not mean that his inquiry must be 'limited . . . by forecasts of the probable result of the investigation . . .' *Blair* v. *United States*, 250 U. S. 273, 282; cf. *Hale* v. *Henkel*, 201 U. S. 43. Nor is the judicial function either abused or abased, as has been suggested, by leaving to it the determination of the important questions which the Administrator's position concedes the courts may decide.

The Court was cognizant of contentions which would block an investigation at the very threshold of the inquiry stating:

> On the other hand, petitioners' view, if accepted, would stop much if not all of investigation in the public interest at the threshold of inquiry and, in the case of the Administrator, is designed avowedly to do so. This would render substantially impossible his effective discharge of the duties of investigation and enforcement which Congress has placed upon him. And if his functions could be thus blocked, so might many others of equal importance.

In *United States* v. *Morton Salt Co.*, 338 U. S. 632, the Court followed *Oklahoma Press* and said with respect to the grounds for an investigation:

> Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless law-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest.

See also: *Federal Trade Commission* v. *Crafts*, 355 U. S. 9; *Endicott Johnson Corp.* v. *Perkins*, 317 U. S. 501; *Hunt Food & Industries, Inc.* v. *Federal Trade Commission*, 286 F. 2d 803 (CA 9) cert. denied 365 U. S. 877; *Provenzano*

v. *Porter*, 159 F. 2d 47 (CA 9) cert. denied 331 U. S. 816; *Walling* v. *La Belle S.S. Co.*, 148 F. 2d 198 (CA 6); *Fleming* v. *Montgomery Ward & Co.*, 114 F. 2d 384 (CA 7).

In *Chapman* v. *Maren Elwood College*, 225 F. 2d 230 (CA 9), relied on by appellees, the court denied enforcement of a subpoena duces tecum issued by the Veterans Administration on the ground that it had been issued for an improper purpose and, was therefore unreasonable. The purpose of the investigation in that case was to compel the college to agree to a ten percent projection demand. Affidavits proving this contention were offered in evidence by the college and were not rebutted by the Veterans Administration. No proof was offered by the unions in the present case that the subpoenas were issued for any improper purpose.

The District Court relied on *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298 but as we pointed out in *Walling* v. *La Belle S.S. Co.*, 148 F. 2d 198 (CA 6), the Federal Trade Commission did not possess power of inspection such as was granted by Congress to the Wage and Hour Administrator under Section 11(a) of the Fair Labor Standards Act. The Secretary here has the same power as the Administrator. The later decisions of the Supreme Court in *Oklahoma Press*, *Morton Salt* and *Crafts* clearly indicate that probable cause for an investigation is not required. In our judgment, the District Court erred in imposing a condition on the exercise of the right granted by Congress to the Secretary to make an investigation.

It is next contended that the subpoenas duces tecum were too broad. In substance, they required production of records containing basic information or data on matters required to be reported from which the organizational reports (Form LM-1) and the financial reports (Form LM-2) filed with the Secretary by the unions may be verified, explained or clarified and checked for accuracy and completeness. These were the records which the statute required the

unions to keep and were quasi-public records. Production of the records could not be resisted on the ground of self-incrimination. *Shapiro* v. *United States*, 335 U. S. 1; *Wilson* v. *United States*, 221 U. S. 361; *United States* v. *Pulford*, 155 F. 2d 944 (CA 6); *Rodgers* v. *United States*, 138 F. 2d 992 (CA 6). The unions asserted no such ground. In our opinion, it was not unreasonable to compel production of records which the law required to be kept and from which the reports filed with the Secretary were made. In no other way could the Secretary verify the reports than by examination of the records. These records were relevant to the inquiry because they would throw light on whether the reports filed by the unions with the Secretary spoke the truth. The District Court, however, had the power to impose protective restraints on the conduct of the investigation to relieve against oppression or other illegal conduct. *Hunt Foods & Industries, Inc.* v. *Federal Trade Commission*, 286 F. 2d 803, 811. (CA 9) cert. denied 365 U. S. 877. This power was not invoked by the unions. They questioned the right of the Secretary to make the investigation.

Oklahoma Press involved a corporation. It is urged that a different rule should apply to labor unions. We think not. In *United States* v. *White*, 322 U. S. 694 a subpoena duces tecum issued by the District Court requiring a union to produce its records before a Grand Jury was resisted by a union officer on the ground that they might tend to incriminate the union or himself individually or as such officer. The Supreme Court held that this defense was not available. While White involved the Fifth Amendment, the opinion of the Court contains language which is pertinent here. The Court said:

> The fact that the state charters corporations and has visitorial powers over them provides a convenient vehicle for justification of governmental investigation of corporate books and records. *Hale* v. *Henkel*, supra; *Wilson* v. *United States*, supra. But the absence of that fact as to a particular type of organization does

> not lessen the public necessity for making reasonable regulations of its activities effective, nor does it confer upon such an organization the purely personal privilege against self-incrimination. Basically, the power to compel the production of the records of any organization, whether it be incorporated or not, arises out of the inherent and necessary power of the federal and state governments to enforce their laws, with the privilege against self-incrimination being limited to its historic function of protecting only the natural individual from compulsory incrimination through his own testimony or personal records.

The Court concluded:

> The union and its officers acting in their official capacity lack the privilege at all times of insulating the union's books and records against reasonable demands of governmental authorities.

Finally, the unions contend that Section 201 of the Act (29 U. S. C. § 431), containing the provisions requiring them to file reports with the Secretary, is unconstitutional in violation of the Commerce Clause, Article I Section 8. This contention was not passed upon by the District Court. The unions claim that the Secretary's authority to investigate is dependent upon Section 201 of the Act, and, therefore, such Section is subject to challenge in this case.

The unions concede (Brief p. 19) that Congress has the power to regulate collective bargaining activities affecting interstate commerce. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1. They admit (Brief p. 22) that the Section would be constitutionally supportable if the reporting requirements were limited to the filing of collective bargaining agreements, reporting strike vote procedures, hiring hall practices and the like. They insist, however, that the Section contains general reporting provisions and is an attempt by Congress, using its conceded power, to legislate with respect to all of the internal affairs of the unions, which are purely local in character. They argue

that if this legislation is sustained it will obliterate any meaningful distinction between federal and state authority.

The trouble with this contention is that the collective bargaining procedures and the like, which admittedly may be regulated, are not the only union activities which substantially affect interstate commerce.

Congress has made detailed findings, based on extensive investigations, which were adopted as part of the Act (29 U. S. C. § 401). These findings, in substance, were "that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation"; that the Federal Government has a responsibility to protect the rights of the employees; that in order to accomplish the free flow of commerce, it is necessary that labor organizations, employers and their officials maintain the highest standards of responsibility and ethical conduct in the handling of their affairs particularly as they affect labor-management relations. Congress found from its recent investigations that these high standards had not been maintained but were breached and disregarded; that it was necessary to pass the Act to eliminate or prevent improper practices which defeated the policy of the Labor-Management Relations Act of 1947, as amended, and burdened and obstructed commerce.

These findings of Congress are binding on the courts. As recently stated by the Supreme Court in *Communist Party of the United States of America* v. *Subversive Activities Control Board*, U. S. , decided June 5, 1961:

> It is not for the courts to re-examine the validity of these legislative findings and reject them. See *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 590. They are the product of extensive investigation by Committees of Congress over more than a decade and a half. Cf. *Nebbia* v. *New York*, 291 U. S. 502, 516, 530. We certainly cannot dismiss them as unfounded or irrational imaginings. See *Galvan* v. *Press*, 347 U. S. 522, 529;

American Communications Assn. v. *Douds,* 339 U. S. 382, 388-389....

Where, as here, the activities have a substantial effect on interstate commerce, it is not an objection that they are local in character. *United States* v. *Darby,* 312 U. S. 100; *Wickard* v. *Filburn,* 317 U. S. 111.

The Commerce Clause does not inhibit Congress in selecting the means deemed necessary for bringing out the desired conditions in the channels of interstate commerce. *American Power & Light Co.* v. *S. E. C.,* 329 U. S. 90, 100.

In our opinion, Section 201 of the Act does not offend against the Commerce Clause.

The judgment of the District Court is reversed and the cause remanded with instructions to grant the petition for enforcement of the subpoenas.

APPENDIX B

No. 14533

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ARTHUR J. GOLDBERG, Secretary of Labor, United States Department of Labor, *Petitioner-Appellant*,

v.

TRUCK DRIVERS LOCAL UNION No. 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, and GENERAL DRIVERS, WAREHOUSEMEN, HELPERS, AND GAS STATION ATTENDANTS LOCAL UNION No. 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, *Respondents-Appellees*.

On Appeal from the United States District Court for the Eastern District of Michigan, Southern Division.

Judgment

August 16, 1961

THIS CAUSE came on to be heard on the transcript of the record from the U. S. District Court for the Eastern District of Michigan, Southern Division, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the cause remanded with instructions to grant the petition for enforcement of the subpoenas.

APPROVED FOR ENTRY:

(s) PAUL C. WEICK
U. S. Circuit Judge

APPENDIX C

Filed Sep 12 1961

No. 14,533

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ARTHUR J. GOLDBERG, Secretary of Labor, United States Department of Labor, *Petitioner-Appellant,*

v.

TRUCK DRIVERS LOCAL UNION NO. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, and GENERAL DRIVERS, WAREHOUSEMEN, HELPER, AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND HELPERS OF AMERICA, *Respondents-Appellees.*

Order

Before: CECIL, WEICK and O'SULLIVAN, *Circuit Judges.*

Upon consideration,

IT IS ORDERED that the petition for rehearing be denied.

PAUL C. WEICK
United States Circuit Judge

APPENDIX D

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
BUREAU OF LABOR-MANAGEMENT REPORTS

SUBPOENA DUCES TECUM

TO: Truck Drivers, Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Officer in Charge of Records), 2741 Trumbull Avenue, Detroit 16, Michigan.

At the instance of the Commissioner, Bureau of Labor-Management Reports, Department of Labor, you are hereby required to appear before Mr. V. L. G. Matelis, an officer of the Bureau of Labor-Management Reports, Department of Labor, at 2741 Trumbull Avenue, Detroit, Michigan, in the City of Detroit, Michigan, on the 28th day of September, 1960, at 10:00 o'clock a.m. of that day, to testify in the Matter of an investigation by the Bureau of Labor-Management Reports, involving a determination whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 et seq., except Title I or amendments made by the Act to other Statutes.

And you are hereby required to bring with you and produce at said time and place the following books, papers and documents:

> All records for the period from January 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secretary of Labor for Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, may be verified, explained or clarified and checked for accuracy and completeness, in connection with all

items referred to or listed in such report, and all items omitted or excluded therefrom which are relevant thereto and are required to be included in said reports, such records to include but not be limited to, vouchers, worksheets, ledgers, audit reports, records of receipt of dues, fees, assessments, fines and work permits, accounts receivable, accounts payable, journals, journal vouchers, check register, payroll register and related records, and all books of accounts of Truck Drivers, Local 299, related to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or other local unions affiliated with said International, including all bank statements, canceled checks, check stubs, audit reports, financial reports, records of loans, records of mortgages, records of ownership of property real and personal, deeds, records of trust, records of investments, and all correspondence and memoranda pertaining to receipts and disbursements.

In testimony whereof, the Seal of the Department of Labor is affixed hereto and undersigned, the Commissioner, Bureau of Labor-Management Reports of said Department of Labor, has hereunto set his hand at Washington, D. C. this 19th day of September, 1960.

Signed: John L. Holcombe, the Seal of the Department of Labor appearing thereon, with the instruction; Fail Not at Your Peril.

APPENDIX E

UNITED STATES OF AMERICA

DEPARTMENT OF LABOR

BUREAU OF LABOR-MANAGEMENT REPORTS

SUBPENA DUCES TECUM

TO: General Drivers, Warehousemen, Helpers and Gas Station Attendants, Local Union No. 614, Teamsters, (Officer in Charge of Records), 1410 S. Telegraph, Pontiac, Michigan.

At the instance of the Commissioner, Bureau of Labor-Management Reports, Department of Labor, you are hereby required to appear before Jack Stump, an officer of the Bureau of Labor-Management Reports, Department of Labor, at the offices of Local Union No. 614, 1410 South Telegraph, in the City of Pontiac, Michigan, on the 5th day of September, 1960, at 10 o'clock a.m. of that day, to testify in the Matter of an investigation by the Bureau of Labor-Management Reports involving a determination whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 et seq., except Title I or amendments made by the Act to other Statutes.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents: All records for the period from January 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secretary of Labor for Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America may be verified, explained or clarified and checked for accuracy and completeness, in connection with all items referred to or listed in such report and all items omitted or excluded therefrom

which are relevant thereto and are required to be included in said reports, such records to include but not be limited to, vouchers, worksheets, ledgers, audit reports, records of receipt of dues, fees, assessments, fines and work permits, accounts receivable, accounts payable, journals, journal vouchers, check register, payroll register and related records, and all books of accounts of Local 614, related to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or other local unions affiliated with said International, including all bank statements, cancelled checks, check stubs, audit reports, financial reports, records of loans, records of mortgages, records of ownership of property real and personal, deeds, records of trusts, records of investments, and all correspondence and memoranda pertaining to receipts and disbursements.

In testimony whereof, the seal of the Department of Labor is affixed hereto, and the undersigned, the Commissioner, Bureau of Labor-Management Reports of said Department of Labor, has hereunto set his hand at Washington, D. C., this 19th day of September, 1960.

(s) JOHN L. HOLCOMBE.

Fail Not at Your Peril

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 15783-809, 15814, 15838, 15857, 15860, 15879-80, 15901-02, 15904, 15911, 15917, 15920-22, 15938, 15947, 15982-83

MONTSHIP LINES, LIMITED, ET AL., PETITIONERS

v.

FEDERAL MARITIME BOARD and THE UNITED STATES OF AMERICA, RESPONDENTS

On Petitions to Review an Order of the Federal Maritime Board

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Decided June 30, 1961

Mr. Burton H. White, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, who was on the brief for petitioners in cases numbered 15808, 15814, 15901, 15902, 15904, 15938, 15947, 15982 and 15983, and intervenors in case numbered 15802, argued for all petitioners except petitioners in cases numbered 15879, 15880 and 15917.

Mr. Elmer C. Maddy, with whom *Mr. Ronald A. Capone* was on the brief, for petitioners in cases numbered 15801 and 15838, argued for all petitioners.

Mr. Leonard G. James, of the bar of the Supreme Court of California, *pro hac vice*, by special leave of Court, for petitioners in cases numbered 15802, 15879, 15880 and 15917. *Mr. Charles F. Warren* also entered an appearance for petitioners in cases numbered 15802, 15879

and 15880, and intervenor Wegal A.B. (Totem Line) in case numbered 15802.

Mr Russell B. Pace, Jr., with whom *Mr. Arthur J. Phelan* was on the brief for petitioners in cases numbered 15800, 15802, 15803, 15809, 15857, 15904, 15938, 15947, 15982 and 15983, and for intervenors in case numbered 15802. *Mr. Frederick M. Bradley* also entered an appearance for petitioners in cases numbered 15800 and 15803. *Mr. Charles W. Halleck* also entered an appearance for petitioners in case numbered 15809.

Mr. Morton Zuckerman, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, with whom *Mr. Morton Lifton* was on the brief, for petitioners in cases numbered 15804, 15805, 15920 and 15921.

Mr. Edward Aptaker, Assistant General Counsel, Federal Maritime Board, with whom *Messrs. James L. Pimper*, General Counsel, Federal Maritime Board, and *Robert E. Mitchell*, Assistant General Counsel, Federal Maritime Board, were on the brief, for respondent Federal Maritime Board.

Mr. Richard A. Solomon, Attorney, Department of Justice, for respondent United States of America.

Mr. Morton Lifton was on the brief for petitioners in cases numbered 15783 through 15798, and 15922.

Mr. Harry A. Inman was on the brief for petitioners in cases numbered 15799 and 15860.

Messrs. Elkan Turk and *Elkan Turk, Jr.*, were on the brief for petitioners in cases numbered 15806 and 15911.

Messrs. J. Joseph Noble and *Roy Leifflen* were on the brief for petitioners in case numbered 15807.

Mr. Arthur E. Tarantino entered an appearance for petitioners in cases numbered 15802, 15808, 15814, 15901, 15902 and 15947.

Before PRETTYMAN, BAZELON and WASHINGTON, Circuit Judges.

BAZELON, *Circuit Judge*: Pursuant to the Judicial Review Act of 1950, 5 U.S.C. §§ 1031-1042 (1958), one hundred and eighty-three alien corporations engaged in the common carriage of cargo and passengers by water between the United States and foreign countries[1] bring these petitions to review an order of the Federal Maritime Board entered April 11, 1960, under § 21[2] of the Shipping Act of 1916.[3] This order requires every com-

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[1] In addition there are five petitioners which are domestic corporations and two petitioners which contend that as of the date of the Board's order they were not engaged in the common carriage of cargo or passengers between the United States and foreign countries.

[2] Section 21, 46 U.S.C. § 820 (1958), provides:

> "The Federal Maritime Board and the Secretary of Commerce may require any common carrier by water, or other person subject to this chapter, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it or him any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this chapter. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the Board or Secretary so requires, and shall be furnished in the form and within the time prescribed by the Board or Secretary. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of $100 for each day of such default.
>
> "Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than $1,000, or imprisonment for not more than one year, or to both such fine and imprisonment."

mon carrier by water subject to the Act to file "a list identifying every contract, agreement or understanding, involving the water-borne commerce of the United States," which was in effect as of January 1, 1960, between the carrier and "any other common carrier by water . . . or with any freight forwarder, terminal operator, stevedore, or ship's agent . . . which related or pertained to" seven specified subjects.[3] In addition, each carrier was required to file with the Board copies of every such agreement not previously filed. The carriers were required to certify under oath that the documents submitted were true and complete records of the agreements called for.

The petitioners filed motions for reconsideration of the Board's order. In each instance the Board denied these motions on the merits without hearing. The orders denying these motions are also before us on review.

Petitioners and respondents join issue on a number of matters. We shall deal first with those questions pertaining to our jurisdiction to review the Board's § 21 order. Then we shall consider the general issues affecting all petitioners. Finally we shall turn to the special issues which are raised by and which affect only certain of the petitioners.

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[3] For the full text of the Board's order, see Appendix.

I. JURISDICTION

A. Effect of 28 U.S.C. § 2112

On June 8, 1960, the first of the instant petitions to review the Board's § 21 order were filed in this court. On the same date a similar petition was filed by States Marine Lines in the United States Court of Appeals for the Second Circuit. Two days later another petition was filed in the Second Circuit by Kerr S.S. Co.

A certified index of the record was filed in this court on October 3, 1960. This is equivalent to filing of the record itself, under 28 U.S.C. § 2112(a). We are advised that neither the record nor any index of the record was at any time filed in the Second Circuit. On October 31, 1960, the Second Circuit upheld the Board's order and denied Kerr's petition. *Kerr S.S. Co. v. United States*, 284 F.2d 61. The question initially presented is whether in light of the applicable statutory provisions the Second Circuit's action precludes our review.

Section 1036 of Title 5, U.S.C. (1958), provides in part:

> . . . the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, as provided in section 2112 of Title 28.

Section 2112(a) of Title 28 provides in part:

> . . . If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency . . . concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may

> thereafter transfer all the proceedings with respect to such order to any other court of appeals.

It is clear, in light of these statutory provisions that we have jurisdiction. The mere fact that petitions for review of the same order were filed in the Second Circuit and that that court has already upheld the order does not oust this court of jurisdiction. The question whether the Second Circuit had jurisdiction to decide *Kerr* in light of 28 U.S.C. § 2112(a) and 5 U.S.C. § 1039(a) (1958)[4] is not before us.

B. Timeliness of Certain Petitions to Review

Section 4 of the Review Act, 5 U.S.C. § 1034 (1958), provides in part:

> Any party aggrieved by a final order reviewable under this chapter may, within sixty days after entry of such order, file in the court of appeals . . . a petition to review such order.

Eleven of the petitioners[5] sought judicial review of the

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[4] This section provides:

> "Upon the filing and service of a petition to review, the court of appeals shall have jurisdiction of the proceeding. The court of appeals in which the record on review is filed, on such filing, shall have jurisdiction to vacate stay orders or interlocutory injunctions theretofore granted by any court, and shall have exclusive jurisdiction to make and enter, upon the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency."

[5] Compania Anonima Venezolana de Navegacion; Pacific Shipowners, Ltd.; Orient Mid-East Lines, Inc.; Jugoslavenska Linijska Plovidba; Splosna Plovba; Navigazione Alta Italia, S.p.A.; Societa Italiana di Armemento "Sidarma"; Black Star Lines, Ltd.; Compania Colombiana de Navegazion Maritima, Ltd.; Compania Maritima Orlanda, S.A.; Marina Mercante Nicaraguense, S.A.

order of April 11 more than sixty days after the order was served, but within sixty days after the Board acted upon their motions for reconsideration of that order. The Maritime Board asserts that these petitions to review are untimely and seeks their dismissal. We think it clear, however, that the petitions in question were timely filed under our decision in *Outland* v. *Civil Aeronautics Board*, —— U.S. App. D.C. ——, 284 F.2d 224 (1960), where we held that the statutory sixty-day period for seeking judicial review of Civil Aeronautics Board orders did not commence until the Board acted upon Outland's motion for rehearing.[6]

The Maritime Board urges, however, that *Outland* is inapplicable since none of the motions for reconsideration we discuss were filed with the Board within the thirty-day period provided by Rule 16 of its Rules of Practice and Procedure. But we agree with petitioners that the Board's consideration of these motions on their merits constituted a waiver of the Board's own limitation period. Cf. *Bowman* v. *Loperena*, 311 U.S. 262 (1940); *City of Pittsburgh* v. *Federal Power Comm'n*, 99 U.S. App. D.C. 113, 237 F.2d 741 (1956). Although a court's or agency's consideration of an untimely motion for rehearing or reconsideration may not constitute a waiver of a limitation period fixed by Congress,[7] we think the rule is otherwise when the limitation period is imposed by the agency.

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[6] The controlling statute in the *Outland* case, 49 U.S.C. § 1486(a) (1958), provides that "any order . . . issued by the Board . . . shall be subject to review . . . upon petition, filed within sixty days after the entry of such order. . . ."

[7] Cf. *Safeway Stores* v. *Coe*, 78 U.S. App. D.C. 19, 136 F.2d 771 (1943).

C. Intervention

Section 8 of the Review Act, 5 U.S.C. § 1038 (1958), provides in part:

> . . . any party or parties in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review such order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the agency's order, may intervene in any proceeding to review such order.

A number of the carriers subject to the Board's order filed notices of intention to intervene[8] or motions for leave to intervene in the instant review proceedings. Most of them also filed petitions to review which we hold above to be timely.[9] But four of the carriers seeking intervention did not file petitions to review.[10]

Assuming *arguendo* that these four are not "parties in interest in the proceeding before the agency" as is required for intervention as a matter of right, it is clear that they are parties "whose interests are affected by the agency's order" and we have discretion under the statute to permit intervention. Allowing these carriers to intervene would not in any appreciable way further complicate this litigation. The Board has not shown that it will be prejudiced by intervention, and the questions raised by

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[8] For our present purposes, we treat the notices of intention to intervene as motions for leave to intervene.

[9] We dismiss as moot the motions for leave to intervene filed by carriers which also filed petitions to review held timely herein.

[10] Americana Shipping Corp.; Kvarnerska Plovidba; Wegal A.B. (Totem Line); Skibsaktieselskapet Solstad.

the intervenors are identical to those raised in the cases in which intervention is sought. The motions for leave to intervene will, therefore, be granted.

II. GENERAL ISSUES

A. Authority under Section 21

Petitioners advance three contentions as to why the instant order falls outside the authority conferred on the Board by § 21 of the Shipping Act. They argue: (1) § 21 does not cover "contracts, agreements, and understandings"; (2) § 21 is limited to obtaining information relevant to the Board's "regulatory" power over carriers' rates under §§ 17 and 18; and (3) § 21 does not authorize the Board to compel the production of documents located outside the territorial confines of the United States.

Petitioners' first contention is properly answered in *Kerr*: namely, that, although § 21 does not expressly speak of "contracts, agreements or understandings," it is clear that such papers are encompassed within the broad language of the section which requires carriers and other persons subject to the Act to file "any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this chapter." Mutual dealings between parties culminating in consensual arrangements are clearly "transactions." And the writings evidencing the arrangements arrived at are just as clearly "memoranda." Therefore, the instant order falls within the scope of § 21.

Petitioners present an elaborate argument based upon the legislative history of § 21. They contend that section is modeled upon § 20 of the Interstate Commerce Act, 34 Stat. 594 (1906), and that a year before the enactment of the Shipping Act the Supreme Court in *United States* v. *Louisville & N. R.R.*, 236 U.S. 318 (1915), limited the similar language of § 20 to cover only accounting and

bookkeeping records. Assuming *arguendo* that petitioners' claims are correct, there is good reason why they should not be followed and why § 21 should not be given a similarly restrictive meaning. In *Louisville* the Interstate Commerce Commission had attempted to inspect the railroad's correspondence under § 20. Had the Supreme Court upheld the Commission's authorization to do so under § 20, it would have been forced to resolve the question whether such inspection constituted an unreasonable search and seizure. Under the Court's then view of the Fourth Amendment's limitation on the compulsory production of corporate records and documents—a view no longer followed, compare *Federal Trade Comm'n* v. *American Tobacco Co.*, 264 U.S. 298 (1924), with *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186 (1946); and *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950)—the Court would probably have had to answer that question in the affirmative. Because the prevailing views on the constitutional question led to a restrictive reading of § 20 of the Interstate Commerce Act in 1915 does not seem to us to justify a simiarly restrictive reading of § 21 of the Shipping Act today when those views are no longer followed.

In addition it should be noted that in *Louisville* the Supreme Court defined "records" as used in § 20 of the Interstate Commerce Act to include "the written evidence of [a corporation's] . . . contracts and business transactions."[11] Section 21 of the Shipping Act also speaks of "records," and consequently the *Louisville* case may be read as supporting the Board's authority under that section.

Petitioners' second contention is that § 21 is limited to enabling the Board to obtain information relevant to carrying out its supervisory power over carriers' rates under

[11] 236 U.S. at 334.

§§ 17 and 18 and is therefore inapplicable where the Board is seeking information to determine whether the prohibitions of §§ 14-16 are being complied with. We find no basis in the Shipping Act for this bifurcation of the Board's authority. Furthermore, petitioners' claim would appear to be laid at rest by the Supreme Court's description of § 21 in *Isbrandtsen-Moller Co.* v. *United States*, 300 U.S. 139, 144-45 (1937):

> The purpose of §/21 is not far to seek. Other sections forbid allowance of rebates, require the filing of agreements fixing or regulating rates, granting special rates, accommodations or privileges, which may be disapproved, cancelled or modified if the board finds them unjustly discriminatory or violative of the act, prohibit undue or unreasonable preferences or the cutting of established rates and unjust discrimination between shippers or ports. To enable it to perform its functions the board may well need such information as that which the section gives it power to demand.

This quotation refers to the Board's responsibilities under §§ 14-16 as well as §§ 17 and 18. It is apparent that § 21 is not to be restricted to what petitioners characterize as the "regulatory" as opposed to the "enforcement" sections of the Act.

Petitioners finally contend that, since § 21 does not expressly authorize the Board to require the production of records or memoranda located outside the territorial confines of the United States, that power ought not to be implied. In support of this argument, they point to § 27 of the Shipping Act, 46 U.S.C. § 826 (1958), under which the Board "for the purpose of investigating alleged violations" may subpoena witnesses or documents "from any place in the United States at any designated place of hearing." Petitioners contend this restriction should be read into § 21. We think not.

It is questionable whether the Board is in fact powerless under § 27 to subpoena documents outside the territorial

confines of the United States. Cf. *Securities & Exchange Comm'n* v. *Minas De Artemisa, S.A.*, 150 F. 2d 215 (9th Cir. 1945), in which a similar description of the Security and Exchange Commission's subpoena power under § 22(b) of the Securities Act of 1933 was held not to preclude the Commission from compelling persons within the United States to produce documents of foreign corporations situated outside this country.

In any event, in light of the coverage and the purposes of the Shipping Act, we can see no reason to restrict § 21 to cover only information within the United States. In enacting the Shipping Act, which deals with foreign as well as interstate commerce, Congress was clearly mindful of the fact that foreign flag as well as United States carriers were subject to regulation thereunder. See H.R. Rep. No. 659, 64th Cong., 1st Sess. (1916). If the Board's investigatory powers were limited to the territorial confines of the United States, regulation of foreign flag carriers would be hampered to a substantial degree. Consequently, we will not read into § 21 a territorial limitation which appears to be contrary to the purposes of the Shipping Act.

We must reject petitioners' contentions regarding protests of foreign governments and extra-territorial enforcement of the Board's order. As the Second Circuit pointed out in *Kerr*, the protests of foreign governments are matters for consideration by the Executive and not the courts. And the question as to whether the order can be enforced by extra-territorial means is not presently before us. All that is here involved is whether the order was properly and validly issued.

B. Notice of Proposed Issuance of a Section 21 Order

Petitioners next contend that because the § 21 order is industry-wide in application it is analogous to rule-making and the Board was required to give notice of the proposed issuance of the order to interested parties so they could

submit their views and arguments. Clearly the order is not legislative in character. In any event, notice and hearing are not prerequisite to the issuance of such an order directed to a single carrier. *Isbrandtsen-Moller Co.* v. *United States, supra.* That the Board chose in this instance as a matter of convenience to issue one order directed to many carriers rather than to issue many orders each directed to a single carrier does not convert the instant order into the promulgation of a rule.

C. The Fourth Amendment

The Board's order does not state the purpose for which the information is demanded. For this reason, among others, petitioners contend that the order violates the Fourth Amendment.[12]

Although earlier limitations on the investigatory powers of administrative agencies have been relaxed in recent years,[13] the Supreme Court has informed us that "a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power. . . . But it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant. 'The gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreason-

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[12] Although this matter was argued in the briefs in the *Kerr* case, the Second Circuit's opinion does not appear to resolve this issue. We note that the court's opinion does not appear to state the purpose of the Board's order:

> "It does not appear that any of the petitioners tried to show what was the financial burden of listing and copying the contracts in question, or that it was out of all reasonable proportion to *any purpose that the proposed investigation might have.*" 284 F.2d at 64, emphasis supplied.

[13] See *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186 (1946).

able.' *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 208." *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652-53 (1950).

What is "reasonably relevant" depends on the purpose and nature of the investigation undertaken by the agency. "[R]elevancy and adequacy or excess in the breadth of the subpoena are matters variable in relation to the nature, purposes and scope of the inquiry." *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186, 209 (1946). And as Professor Davis has pointed out, "the breadth of a subpena or of a search made in records may be excessive, but the test is relevance to the specific purpose, and the purpose is determined by the investigators." 1 DAVIS, ADMINISTRATIVE LAW TREATISE § 3.06 (1958). Consequently, the Board's failure in the instant case to state its purpose in requiring the information demanded precluded a determination of relevancy.

Respondents, relying on *Morton Salt*, contend that no detailed specification of purpose is necessary when an agency is investigating "merely on suspicion that the law is being violated, or even because it wants assurance that it is not." [14] If this order is pursuant to such an investigation, a matter which the Board contends in its brief but which does not appear from the face of the order, it might be argued that a *detailed* specification at this stage of "initial inquiry" may not be feasibly required. Whatever may be the validity of that argument, we think it cannot excuse the absence of any indication whatsoever, as in the instant order, of the investigation's purpose since no basis is thereby afforded for determining the relevancy of the information demanded. And just as the reasons underlying agency action must appear from the agency's order, so too we think that the statement of purpose must be apparent from the order itself and cannot be supplied by contentions in the briefs.

[14] 338 U.S. at 642-43.

In any event, the language in *Morton Salt* upon which the Government relies was not directed to the matter of purpose and relevancy, but rather to the issue of whether the Federal Trade Commission had power to compel reports absent "probable cause" to believe that the law was being violated.

The Government also points to *Isbrandtsen-Moller Co. v. United States, supra;* and *Bowles v. Northwest Poultry & Dairy Products Co.*, 153 F. 2d 32 (9th Cir. 1946), for the proposition that statements of purpose are unnecessary. In *Isbrandtsen-Moller* which, like the instant case, involved an investigatory order pursuant to § 21 of the Shipping Act, the order recited:

> It appearing, That full and complete information as to the rates and charges for or in connection with the transportation of certain property from continental United States to points in foreign countries by carriers by water in foreign commerce subject to the Shipping Act, 1916, is necessary to the proper administration of the regulatory provisions of said act . . . .[15]

This order, stating the subject of the investigation to be rates and charges, provided a standard for determining the relevancy of the documents demanded. Similarly, the order involved in *Northwest Poultry* contained a sufficient statement of purpose and relevancy since the records there required were needed in order to determine whether the corporation had complied with a particular Regional Price Order under the Emergency Price Control Act.

Since the reasonableness of the order under review is dependent upon the relevancy of the information demanded, and that cannot be determined in the absence of a statement of purpose, the order is fatally defective. Because petitioners' contentions regarding the breadth and the vagueness of the order are in part dependent upon the

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[15] *Isbrandtsen-Moller Co. v. United States*, 14 F. Supp. 407, 408 (S.D.N.Y. 1936).

question of relevancy, we find it unnecessary to presently deal with them. The order under review is vacated and the case remanded to the Board for proceedings not inconsistent with this opinion.

III. SPECIAL ISSUES

A. Local Foreign Law Prohibiting Disclosure

Several petitioners,[16] foreign steamship lines of Yugoslavia and Netherlands nationality assert that the production by them of documents required by the Board's § 21 order would be violative of their local national law. They point to provisions of the Yugoslav Criminal Code and the Netherlands Economic Competition Law which they contend preclude compliance with the Board's order.

Prior to determining whether these foreign laws do in fact forbid the production of documents such as those required by the Board's order and, if so, what effect this should have upon compliance, the appropriate procedure is to require these petitioners to make a good faith attempt to obtain a waiver of such restrictions from their respective governments. *United States* v. *Standard Oil Co. (N.J.)*., 23 F.R.D. 1 (S.D.N.Y. 1958); *Societe Internationate, etc.* v. *McGranery*, 111 F. Supp. 435 (D.D.C. 1953), *affirmed sub nom. Societe Internationale, etc.* v. *Brownell*, 96 U.S. App. D.C. 232, 225 F. 2d 532 (1955), *cert. denied*, 350 U.S. 937 (1956); *Societe Internationale, etc.* v. *Brownell*, 100 U.S. App. D.C. 148, 243 F. 2d 254 (1957), *reversed and remanded sub nom. Societe Internationale, etc.* v. *Rogers*, 357 U.S. 197 (1958).

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[16] Koninklijke Nederlandsche Stoomboot Maatschappij, N.V.; N.V. Stoomvaart Maatschappij "Nederland"; Koninklijke Rotterdamsche Lloyd, N.V.; N.V. Nederlandsch-Amerikaansche Stoomvart Maatschappij ("Holland Amerika Lijn"); Nederlandsche Stoomvart Maatschappij "Oceaan," N.V.; Oranje Lijn (Maatschappij Zeetransport), N.V.; Jugoslacenska Linijska Plovidba; Splosna Plovba; Karenska Plovidba.

Consequently, these petitioners should upon the remand bring any arguments that their local law prohibits compliance before the Board so that it can then initially determine whether petitioners have made a good faith effort to secure waivers and, if so, whether compliance is to be required.

B. Jurisdiction Over Certain Petitioners

Two of the petitioners [17] contend that they are not subject to the order since on the date of that order neither of them was a common carrier by water engaged in the foreign commerce of the United States. One petitioner contends that it terminated all service with the United States in November 1959, while the other contends it terminated service in February 1960.

Assuming *arguendo* that these petitioners would not be subject to the Board's order if they had permanently terminated their service to or from the United States before April 11, 1960, this court has nothing before it to show such termination other than declarations of petitioners in their briefs. This clearly seems to be a matter upon which evidence should be taken to determine the nature and extent of the cessation of these petitioners' activities. Consequently, on remand these petitioners should bring their contentions before the Board so it can have the opportunity to pass upon this issue in the light of an adequate factual record which can be then made.

We consider it unnecessary to consider the other contentions raised by the petitioners at this time.

Order Vacated.

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[17] Prince Line Ltd.; Compania Espanola de Navegacion Maritima, S.A.

APPENDIX

Federal Maritime Board Order, April 11, 1960

"Section 21 Order — Contracts, Agreements and Understandings of Common Carriers by Water."

By virtue of the authority vested in it by section 21 of the Shipping Act, 1916 (46 U.S.C. 820), the Federal Maritime Board hereby orders every common carrier by water subject to said Act, including but without limitation, those named in Appendix A attached hereto and made part hereof, to file with it on or before July 15, 1960, the following:

1. A list identifying every contract, agreement or understanding, involving the water-borne commerce of the United States, which it has entered into with any other common carrier by water and or common carriers by water, and or with any freight forwarder, terminal operator, stevedore, or ship's agent which was in effect as of January 1, 1960, which relates or pertains to:

(a) the fixing or regulating of rates, fares, charges or practices for the loading, unloading, handling, transporting, storing, or delivering of property or passengers;

(b) the giving or receiving of special rates, fares, accommodations, or other special privileges or advantages;

(c) the controlling, regulating, preventing or destroying of competition;

(d) the pooling or apportioning of earnings, losses or traffic or the joint use of equipment or facilities;

(e) the allotting of ports or the restricting or otherwise regulating of the number and character of sailings between ports;

(f) the limiting of, or regulating of, in any way, the volume or character of freight or passenger traffic to

be carried or to be received, handled, stored or delivered;

(g) the providing for, in any manner, of an exclusive, preferential, or cooperative working arrangement.

Documents filed for approval under section 15 of said Act (46 U.S.C. 814) may be identified by citation of the Federal Maritime Board number assigned thereto, and documents filed in the past year in response to another order issued pursuant to said section 21 may be identified by stating the dates of such order and response; as to others, specify the effective date and the parties.

2. A copy of every contract, agreement, or understanding identified on said list, which has not been filed for approval under said section 15, and has not been filed with the Board in the past year in response to an order issued pursuant to said section 21. If any such contract, agreement, or understanding is oral, it shall be set forth in a memorandum in sufficient detail to represent a true and complete record of the contract, agreement, or understanding.

3. A statement, under oath, by a duly authorized officer of the carrier, that the records submitted in response to items 1 and 2 above are true and complete records of all contracts, agreements and understandings of the character or nature required to be filed by this Order, to which such carrier was a party as of January 1, 1960.

By the Federal Maritime Board.

Date: April 11, 1960

JAMES L. PIMPER,
Secretary.

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil 20628

JAMES P. MITCHELL, Secretary of Labor, U. S. Department of Labor, *Defendant and Petitioner*,

v.

TRUCK DRIVERS LOCAL UNION NO. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an unincorporated association,

and

GENERAL DRIVERS, WAREHOUSEMEN, HELPERS AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an unincorporated association, *Plaintiffs and Respondents*.

Opinion

APPEARANCES:

GEORGE E. WOODS, JR.
United States Attorney

and

AARON A. CAGHAN,
Regional Attorney,
Department of Labor,
Attorneys for Petitioner

GEORGE S. FITZGERALD
HUGH HAFER
PAUL B. MAYRAND,
Attorneys for Respondents.

Proceedings on the issues here involved were first initiated in this court with the filing by Local Unions 299 and

614 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, of a complaint and request for temporary restraining order, to enjoin the Secretary of Labor and his duly delegated subordinates from enforcing compliance of certain subpoenas duces tecum allegedly issued pursuant to the Labor-Management Reporting and Disclosure Act. That cause was dismissed by stipulation of the parties because service was not and could not effectively be made on the Secretary of Labor from this jurisdiction.

The instant case was thereupon instituted by the Secretary of Labor, and this court then signed an order directing the respondents to show cause why subpoenas duces tecum issued by the United States Department of Labor on September 19, 1960 should not be enforced.

In the hearings before this court, together with arguments of respective counsel and through the briefs, pleadings and exhibits, the Secretary of Labor has never indicated that there was any complaint or charge either filed with or pending before him involving the respondents. Nor does the Secretary of Labor, or his duly authorized and delegated subordinates, indicate or intimate that there has been, could be, or do they have any reason to believe any violation of law has been committed or contemplated by the respondent unions.

Thus, in point of fact, this case can only be considered from the viewpoint that there is no reason for the issuance of the subpoenas duces tecum, aside from the mere desire of the Secretary of Labor to examine the books and records of the respondents under the claimed broad inquisitorial powers granted him by the Labor-Management Reporting and Disclosure Act of 1959, 29 USC 401 et seq., commonly called the Landrum-Griffin Bill.

More specifically the subpoenas duces tecum (addressed to each local) states that:

"At the instance of the COMMISSIONER, BUREAU OF LABOR-MANAGEMENT REPORTS, DEPARTMENT OF LABOR, you (the officer of the local) are hereby required to appear before (an officer of the Bureau named, together with the date, time and place) to testify In The Matter of *an investigation by the Bureau of Labor-Management Reports involving a determination whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959*, 29 U.S.C. 401 et. seq., except Title I or amendments made by the Act to other Statutes."

The above portion of the subpoena duces tecum embodies certain portions of Section 601 of the Act (Section 521(a) USC Title 29) while the remaining portions of the subpoena duces tecum read as follows:

"And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

"All records for the period from January 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secretary of Labor for Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America may be verified, explained or clarified and checked for accuracy and completeness, in connection with all items referred to or listed in such report and all items omitted or excluded therefrom which are relevant thereto and are required to be included in said reports, such records to include but not be limited to, vouchers, worksheets, ledgers, audit reports, records of receipt of dues, fees, assessments, fines and work permits, accounts receivable, accounts payable, journals, journal vouchers, check register, payroll register and related records, and all books of accounts of Local 614, related to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or other local unions affiliated with said

> International, including all bank statements, cancelled checks, check stubs, audit reports, financial reports, records of loans, records of mortgages, records of ownership of property real and personal, deeds, records of trusts, records of investments, and all correspondence and memoranda pertaining to receipts and disbursements."

and embody the significant phrasing of Section 206 of the Act, Section 436 USC Title 29, having to do with retention of records by the unions for a five-year period.

The respondents resist the enforcement of the subpoena upon legal grounds. They urge this court to accept the applicable portions of *FTC* v. *American Tobacco*, 264 U.S. 298, and declare that these subpoenas are unenforceable as being too broad; that the respondents are voluntary associations and not corporations and therefore that the law pertaining to the amenability of corporations to administrative subpoenas are not applicable to them; that the interpretation of the Landrum-Griffin Act suggested by the Secretary of Labor is not in accordance with established legal principle or, conversely, that an interpretation which would require respondents to submit the material sought is an unconstitutional interference by Congress in the internal affairs of a union.

The government, depending upon the Landrum-Griffin Act, relies upon interpretation of *Oklahoma Press* v. *Walling*, 327 U.S. 186, and the cases cited therein; that the specific reference to the Federal Trade Commission by Congress, in Section 601(b) of this Act, indicates the intent of Congress to grant the inquisitorial powers sought to be enforced here; that Congress has the authority to grant to the Secretary sweeping subpoena power under the Act, and as being used here this subpoena power is within the purview of the Act.

The case of *FTC* v. *American Tobacco*, 264 U.S. 298, standing alone clearly indicates the position of the Ameri-

can Judiciary on the "broad shotgun" type of subpoena such as it under consideration here. We cannot cavalierly pass the intendments by Mr. Justice Holmes. The administrative fishing expedition, as well as the judicial, have formerly received condemnation. The following excerpts are in point and bear out the thoughts of this court:

> "Anyone who respects the spirit as well as the letter of the Fourth Amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire (Interstate Commerce Commission v. Brimson, 154 U.S. 447, 479), and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. * * * It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up. * * *
>
> "The right of access given by the statute is to documentary evidence—not to all documents, but to such documents as are evidence. The analogies of the law do not allow the party wanting evidence to call for all documents in order to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it. Formerly in equity the ground must be found in admissions in the answer. *Wigram, Discovery*, 2d ed., § 293. We assume that the rule to be applied here is more liberal but still a ground must be laid and the ground and the demand must be reasonable. *Essgee Co.* v. *United States*, 262 U.S. 151, 156, 157. A general subpoena in the form of these petitions would be bad. Some evidence of the materiality of the papers demanded must be produced."

The problem next to be faced, however, is whether or not *American Tobacco*, supra, has been delimited by *Oklahoma Press*, supra, and therefore controlling in this cause. Obviously *Oklahoma Press*, in part at least, overshadows the broad language of *American Tobacco*. An analysis of the principles enunciated in *Oklahoma Press* is therefore

in order. The resistance to the subpoena in the latter case was based on the prohibitions of the Fourth and Fifth Amendments.

The arguments made in the *Oklahoma Press* concerning the Fifth Amendment to the United States Constitution are not applicable here. No such claim being made by these respondents and, in point of fact, such an argument would not "hold water" in light of the doctrines enunciated there and in *U. S.* v. *White*, 322 U.S. 694.

However the language used in *Oklahoma Press* concerning the "reasonableness" of the breadth of administrative subpoenas is clear. The protections of the Fourth Amendment have never been abandoned.

And it is obvious that Congress intended the judiciary to make an independent investigation concerning the possibility of the "fishing expedition", because as set forth in *Oklahoma* (page 209) concerning the limitations upon the administrative use of subpoena:

> "Necessarily, as has been said, this cannot be reduced to formula: for *relevancy and adequacy* (emphasis ours) *or excess in the breadth of the subpoena are matters variable in relation to the nature, purposes and scope of the inquiry.*"

Therefore, if the judiciary is to play any role, aside from that of an aide to the administrative or executive, it must make an independent determination of the basis or impelling motive of the investigation. In order to test the breadth of the subpoena there must or should be a standard by which to measure. Therefore, the court should be entitled to know or be advised of the scope of the inquiry. But, by hypothesis, as here, we have again nothing against which to measure and we are convinced that this is petitioner's intention. Conversely, petitioner urges that there need be no disclosure to permit the Secretary to obtain the records sought. The query then presents itself: how

can it be determined whether or not the subpoena can be tested for relevancy, adequacy, or excess in breadth. It is apparently the petitioner's contention that this need not be an essential. How then, without a focal point can the court determine relevancy.

If the words "when he deems it necessary" are to be given any meaning, then there must be some showing beyond the mere action of proceeding by the Secretary of Labor, i.e., the showing of necessity.

Respondents have further made the distinction that the *Oklahoma Press* case concerns corporations, and therefore is not applicable to labor unions. All cases and periodicals have described unions as voluntary associations and for the most part have dealt with labor unions as such entities. Even in *Landrum-Griffin* (*Section 605*) special provision is made for service of process upon unions, obviously enacted because of the unusual characteristics of voluntary associations. True, for some purposes, the union has been treated as a corporate entity. *U. S.* v. *White*, 322 U.S. 694. (However, the Fifth Amendment problems are not present here.) But there are recent cases which sharply point up the inter-relationship of the individual members with a voluntary association. *NAACP* v. *Alabama*, 357 U.S. 449.

In both of the above cases the United States Court held that the rights of the members of a voluntary association were so bound up with the rights and privileges of the voluntary association that it was declared to be an invasion of the personal rights and privileges of the individuals to require the association to deliver up its membership lists.

In the case at bar the subpoena is sufficiently broad to require the union to deliver up its membership lists (to check on dues paid) and the Secretary may, thereafter, at his discretion, deliver the information to the "interested parties" (part of Section 601(a)). Yet in the debates in

Congress involving the Landrum-Griffin Act, the membership lists were declared inviolate. Congress could never have intended that, by indirection, it policies could be overturned, since union dissidents, or persons seeking to destroy unions, through the unlimited discretion of an administrative officer, could obtain and disseminate such lists. Perhaps such an analogy may be extreme, yet again, what safeguards or standards do exist under the petitioner's theory?

This court should not by judicial legislation encourage the extension of the "fishing expedition" into the field of personal rights. Although the *Oklahoma* case, supra, may appear to have permitted the government to extend the subpoena privilege over that of personal freedom, Mr. Justice Murphy in his dissent to that case did call our attention to the probable consequences.

This court would be loath to extend any further the doctrines enunciated in the *Oklahoma Press* case. Corporations, perhaps, because they are artificial creatures, have fallen to the onslaught, but we note that the court there took great pains to emphasize and re-emphasize that the application of the principles set forth there should apply only to corporations. The voluntary association does have the elements of individual persons sufficiently so that the Fourth Amendment does give some protection, if we are to give any meaning to that Fourth Amendment. As set forth in Thomas M. Cooley's *Constitutional Limitations* (8th Ed. 1927), page 617:

> "The provisions prohibiting unreasonable searches and seizures 'should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts or by well-intentioned, but mistakenly overzealous executive officers.' (Case footnoted) But they should be so construed as to conserve public as well as individual rights." (Case footnoted)

We cannot close our eyes to the ever closing circle of what we have been pleased to call the right to reasonable privacy.

It was pointed out by the petitioner in his brief that the Teamsters Union is the object of this particular legislation. If so, the Act itself does not so state, nor would it be proper legislation. Thus, this court must take into consideration the portent of the Act in all its significance.

We do not conceive it to be justice to be oblivious to unreasonable subpoena powers and abandon any litigant to the whim and caprice of an administrative officer. The judiciary, in America at least cannot indulge itself with the luxury of the personal vendetta. The basis of our jurisprudence is "equal justice before the law" and any limitation emasculates the entire concept. All unions, or corporations, or individuals for that matter, are to receive the same treatment. There has been presented here no limitation upon the issuance of the broad subpoenas, nor has there been clearly demonstrated that applicable laws have so cut down the protections of this law, insofar as fishing expeditions are concerned, as to require the respondents to turn over all their records without a murmur. It has been said repeatedly that ours is not a government of men, but of laws.

The subpoenas by themselves are so broad that they constitute a complete seizure unrelated to any recorded purposeful investigation.

Comment should be made upon the requirement of Section 601 permitting the Secretary the right to issue an investigatorial subpoena whenever "he deems it necessary". This language certainly indicates that Congress intended that some showing be made on the question of necessity and it necessarily follows that there must be something upon which to base even an unreasonable declaration of the feeling of necessity by the Secretary.

If the courts cannot impose a limitation of some sort upon the unrestricted use of the subpoena power, the way would be open to unlimited harassment at the whim and caprice of the Executive, or by an administrative officer.

By this we do not mean that the Secretary of Labor cannot investigate, nor that he should cease investigating, or be alert to any violations as they occur or are about to occur, but the manner and means of the investigations should be strictly within legal means and not merely at his sole notion or fancy, or with the power allegedly urged here.

In this instant case the Department of Labor has refused to show, or has been unable to show, any basis for this investigation. This court feels that the requirement of when "he deems it necessary" (Section 601) has its foundation in some reason or purpose, rather than being an excuse for merely looking into the matters of union affairs, relevant or irrelevant, in the hope of something turning up, be it of any nature, without some reasonable foundation or valid purpose.

The interpretation sought by the government here would mean that at the whim of any administerial officer he could decide to exercise the strong arm of his power in an attempt to personally embarrass any union or union officer whom he might personally dislike. Furthermore, what is to prevent repetitious harassment? What are the standards?

This court feels that "necessity" means what it says, and here, where is the necessity? On what basis does the Secretary of Labor here "deem it necessary"?

There are other and further points well worth noting in the case at hand.

Section 201(c) Title II of the Labor-Management Reporting and Disclosure Act requires every labor organization to submit (its) reports to all of its membership, but

then requires any member (in the district court, if necessary) to show "just cause" to examine any books, records * * * etc. to verify such a report.

Thus, even a member whose interest in the Union is far greater and closer than that of the government, must show "just cause".

Section 206 of the Labor-Management Reporting and Disclosure Act requires that the union keep its books and records etc. for five years. This court is convinced this section was intended solely as a requirement and mandate that the records (upon which the report to the Secretary was based) be kept intact so that, should they be needed in any proper situation, they would be available. We cannot read into this section the argument that those records are for the Secretary's indiscriminate inspection without a showing of necessity.

Although this point is not specifically urged by the petitioner, the fact that the phrasing in the section is incorporated in part of the subpoenas duces decum, indicates that such borrowing of the phrasing might have some such implication.

Thus, this court is of the opinion that Section 601 is the only section applicable here.

Respondents have also raised the question of the Secretary subpoenaing books and records beyond the effective date of the Act. Since the above conclusions are dispositive of the basic issues here, it is not necessary to go into that point.

THEREFORE IT IS ORDERED that the petition for the order of compliance should be and hereby is denied.

FRED W. KAESS
United States District Judge

APPENDIX H

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Misc. No. 22-61

ARTHUR J. GOLDBERG, Secretary of Labor, *Petitioner*,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc.,
Respondent.

Memorandum

This matter came before the Court by way of a petition filed to compel the respondent to attend, testify and produce documentary evidence under the terms of the so-called Labor Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 et seq.; 29 U.S.C. 401 et seq.) The Court concludes that the subpoena should be enforced and it is so ordered. Order accordingly. *Goldberg* v. *Truck Drivers' Local Union No. 299, et al.*, U. S. Court of Appeals, 6th Cir., decided August 16, 1961 and cases therein cited. See also, *Oklahoma Press Co.* v. *Walling*, 327 U.S. 186; *United States* v. *Morton Salt Co.*, 338 U.S. 632. See also, generally, *Blair* v. *United States*, 250 U.S. 273, 282, 283. *Montship Lines, Limited, et al.* v. *Federal Maritime Board and U.S.A.*, U. S. Court of Appeals D.C. Cir., No. 15783-809, et al., decided June 30, 1961, is not to the contrary.

/s/ MATTHEW F. McGUIRE
Matthew F. McGuire
United States District Judge

October 5, 1961

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NO. 495

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

TEXAS DRIVERS LOCAL UNION NO. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND GENERAL DRIVERS, WAREHOUSEMEN, HELPERS AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioners*,

v.

ARTHUR J. GOLDBERG, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS (AFL-CIO); BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPERHANGERS OF AMERICA, (AFL-CIO); ALUMINUM WORKERS INTERNATIONAL UNION (AFL-CIO); AMERICAN FEDERATION OF TECHNICAL ENGINEERS (AFL-CIO); TOBACCO WORKERS INTERNATIONAL UNION (AFL-CIO) AS AMICI CURIAE IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. 495

TRUCK DRIVERS LOCAL UNION NO. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND GENERAL DRIVERS, WAREHOUSEMEN, HELPERS AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioner*,

v.

ARTHUR J. GOLDBERG, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS (AFL-CIO); BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPERHANGERS OF AMERICA, (AFL-CIO); ALUMINUM WORKERS INTERNATIONAL UNION (AFL-CIO); AMERICAN FEDERATION OF TECHNICAL ENGINEERS (AFL-CIO); TOBACCO WORKERS INTERNATIONAL UNION (AFL-CIO) AS AMICI CURIAE IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (AFL-CIO), Brotherhood of Painters, Decorators, and Paperhangers of America, (AFL-CIO), Aluminum Workers International Union, (AFL-CIO), American Federation of

Technical Engineers (AFL-CIO), Tobacco Workers International Union (AFL-CIO) hereby respectfully submit a Brief amici curiae, as provided in Rule 42 of the Rules of this Court, in support of the Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit in this case. The consent of the attorneys for the petitioners and the respondent has been obtained.

The above-named Unions are national and international labor organizations with a total membership of approximately 420,000 individuals.

Petitioners in this case are challenging the Secretary of Labor's construction, and alternatively the constitutional validity, of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) §521. The construction of this provision adopted by the Secretary of Labor would permit the Secretary to obtain judicial enforcement of subpoenas duces tecum without making any administrative showing on the issue of necessity for their enforcement against labor organizations.

We, as labor organizations, subject to the provisions of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) §521, urge that this Court grant the Petition for Writ of Certiorari in this case, since it raises grave and serious issues concerning our right and the right of all other labor organizations in the United States to be free from arbitrary, capricious, and unreasonable investigations. We submit the enforcement of administrative subpoenas merely on the ground of administrative curiosity and without any showing of a necessity would encroach upon the constitutional rights and protections of labor organizations.

In addition, the enforcement of broad subpoenas such as form the subject matter in the instant case would seriously hamper the normal administration of labor organizations by requiring them to produce vast quantities of documents

as to which there has been no showing of any relationship to a legitimate investigatory purpose.

We furthermore hereby adopt the reasons stated by the petitioners for granting the writ in the instant case.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1961

TRUCK DRIVERS LOCAL UNION NO. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND GENERAL DRIVERS, WAREHOUSEMEN, HELPERS AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONERS

v.

ARTHUR J. GOLDBERG, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 495

TRUCK DRIVERS LOCAL UNION NO. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND GENERAL DRIVERS, WAREHOUSEMEN, HELPERS AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONERS

v.

ARTHUR J. GOLDBERG, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Michigan (R. 55a-63a,

Pet. App. 42a-52a) is unreported.[1] The opinion of the Court of Appeals (Pet. App. 1a-16a) is reported at 293 F. 2d 807. The order of the Court of Appeals denying a petition for rehearing (Pet. App. 18a) is unreported.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. 1a) was entered on August 16, 1961. A timely petition for rehearing was denied on September 12, 1961 (Pet. App. 18a). The petition for a writ of certiorari was filed on October 14, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, as a prerequisite to judicial enforcement of a subpoena *duces tecum* issued under the provisions of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 521, the Secretary of Labor must establish probable cause or some similar basis for believing that the Act has been or is about to be violated.

2. Whether the reporting provisions of the Labor-Management Reporting and Disclosure Act of 1959 are unconstitutional as beyond the power of Congress under the Commerce Clause of the Constitution.

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[1] "R" references are to the appendix to the Secretary's brief in the Court of Appeals, filed as part of the record in this Court. "Pet. App." references are to the appendix to the petition for certiorari.

STATUTES INVOLVED

The reporting provisions of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 431, 436, and 521, are set forth in the Appendix, *infra*, pp. 23-26.

STATEMENT

This action resulted from the refusal of the petitioners to comply with certain subpoenas *duces tecum* issued by the Bureau of Labor-Management Reports, United States Department of Labor, and directed to the officers in charge of the petitioners' local unions. These subpoenas were issued pursuant to statutory authority given to the Secretary of Labor by Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 521. The background of the case may be summarized as follows:

Section 201 of the Reporting and Disclosure Act, *infra*, pp. 23-25, requires all unions subject to the provisions of the Act to file organizational and annual financial reports with the Secretary of Labor. Section 206, *infra*, pp. 25-26, provides that every person required to file these reports shall retain for a period of five years "records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness * * *."

Section 601, *infra*, p. 26, confers authority upon the Secretary "when he believes it necessary in order to determine whether any person has violated or is about to violate" the reporting provisions "to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto." For this purpose, subsection (b) gives him the same subpoena power and sanctions accorded the Federal Trade Commission by Sections 9 and 10 of the Federal Trade Commission Act, 15 U.S.C. 49, 50.

Pursuant to Section 201, petitioners filed organizational reports in 1959 and financial reports in March and April 1960, the latter covering the period from January 1 to December 31, 1959.

On September 19, 1960, the subpoenas here involved were issued. The subpoena directed to the officer in charge of the records of petitioner Local 299 required him to appear before an authorized representative of the Secretary of Labor and to bring with him and produce all records from January 1, 1959, containing data on matters required to be reported by Section 201 (R. 7a, 8a). The subpoena recited that the data produced should be such that the organizational and financial reports filed by the union could be "verified, explained or clarified and checked for accuracy and completeness" (R. 7a, 8a). The subpoena expressly stated that its issuance was in connection with "an investigation by the Bureau of Labor-Management Reports involving a determination

whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959" (R. 7a-8a). In effect, it called for the production of those books and records which, under Section 206, the union was required to keep available for five years after submitting the reports. The subpoena *duces tecum* directed to petitioner Local 614 (R. 9a) was in all material respects identical to the one directed to Local 299.

Thereafter, the officers in charge of petitioners' records appeared and declined "to comply with the terms and demands of the subpoena[s]" (R. 14a, 19a). They stated that this refusal was not based on a physical inability to produce the subpoenaed documents, but instead was for legal reasons (R. 14a, 19a).

Following these refusals, the Secretary of Labor, pursuant to the provisions of Section 601(b), *infra*, p. 26, filed a petition for enforcement in the district court. Following a hearing and the submission of briefs in which petitioners urged, *inter alia*, that the Secretary had failed to show probable cause to believe that a violation of the Act had been or was about to be committed (R. 50a), the district court denied the petition. While not expressly using the term "probable cause," the court held that the Secretary was required by Section 601 to show "some reasonable foundation" or "basis for this investigation", *i.e.* that he has reason "to believe [a] violation of law has been committed or contemplated" by petitioners. The district court also expressed the opinion that, if the statute were not so construed, it might result in an

infringement of the petitioners' rights under the Fourth Amendment to the Constitution (R. 58a-62a, Pet. App. 46a-50a).

The Court of Appeals for the Sixth Circuit reversed and remanded the cause with instruction to grant the petition for enforcement of the subpoenas (Pet. App. 17a). The Court of Appeals pointed out (Pet. App. 9a):

> The legislative history of the Act is clear that Congress rejected the "probable cause" requirement because it might hamper the Secretary in the performance of his duties with respect to investigation which were imposed upon him by the Act. With such a requirement, each investigation would likely be met by a lawsuit in which the Secretary would be obliged to prove a probable violation of the Act or enforcement of subpoenas would be denied. Even if successful in his proof, the investigation by the Secretary might be delayed for months or years while the matter was being litigated in the courts. It seems to us that the court ought not to impose a condition, which Congress rejected, on the exercise of the right of the Secretary to investigate. Nor do we see any real difference between the rejected "probable cause" requirement and that of a "reasonable basis" for the investigation adopted by the District Court. While the disclosure sought must not be unreasonable or oppressive * * * this does not mean that the Secretary is obligated to establish a reasonable basis for his investigation. If the Secretary was in possession of facts establishing a probable violation he might never need to investigate. The purpose of the investigation authorized by Con-

> gress was to provide the means of discovery whereby the Secretary could determine whether the Act was being violated, or about to be violated.

In this connection, the court relied upon this Court's decisions in *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186, and *United States* v. *Morton Salt Co.*, 338 U.S. 632. Additionally, the court rejected petitioners' insistence that the reporting provisions of the Act are unconstitutional as beyond the power of Congress under the Commerce Clause.

ARGUMENT

The decision of the Court of Appeals is plainly correct. The terms and legislative history of Section 601 of the Labor-Management Reporting and Disclosure Act convincingly demonstrate that the Act does not require the Secretary of Labor to establish probable cause for believing the Act has been or is about to be violated—or something akin to it—prior to obtaining judicial enforcement of a subpoena *duces tecum* issued under the Act. The decisions of this Court leave no doubt that the Fourth Amendment does not impose such a requirement. Rather, both the Act and the Constitution leave the Secretary free to investigate whenever he believes it necessary in order to ascertain whether a statutory violation has occurred or is about to occur, and permit the subpoenaing of those documents which (like the books and records sought here) are required to be maintained. Moreover, there is clearly no merit to petitioners' argument that the Act is beyond the power of Congress

under the Commerce Clause of the Constitution. Accordingly, certiorari should be denied.[2]

1. In the district court, petitioners insisted that the subpoenas issued by the Secretary could not be enforced because there was no showing of "probable cause to believe that a violation of the Reporting and Disclosure Act has been or is about to be committed" (R. 50a). However, in the court of appeals (Br. pp. 2-4) and in their petition in this Court (Pet. 16-17), they have seemingly abandoned any reliance upon a probable cause requirement, as such. Instead, they now couch their argument in terms of an obligation on the part of the Secretary to show "the existence of a reasonable belief of the necessity for a particular investigation" (Pet. 16), or the "basis [on which he] selected any one particular labor union" (Pet. 18). Neither contention is valid.

a. If petitioners are suggesting that the Secretary must first have knowledge of facts indicating that the Act has been or is about to be violated before he can inspect a union's records as authorized by the Act, which seems to be another way of stating a requirement of probable cause, the answer is to be

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[2] It should be noted that the United States District Court for the District of Columbia has followed the Court of Appeals for the Sixth Circuit and ordered compliance with subpoenas virtually identical to those in the instant case. *Arthur J. Goldberg* v. *International Brotherhood of Teamsters, etc.*, Misc. No. 22-61, United States District Court for the District of Columbia, decided October 5, 1961, now pending on appeal in the United States Court of Appeals for the District of Columbia Circuit, No. 16,693.

found in the unambiguous statutory language and the legislative history.

Section 601, *infra*, p. 26, states that the Secretary shall have power "when he believes it necessary in order to determine whether any person has violated or is about to violate" the Act to make an investigation and inspect such records "as he may deem necessary." These words clearly commit the matter of the necessity of initiating and investigation to the judgment of the Secretary of Labor. All that the statute requires as a prerequisite is that the Secretary "believe it necessary" to investigate and inspect the records. The petitioners seek to insert into Section 601 restrictions upon the Secretary's investigatory authority which simply are not in the section as written by Congress.

Furthermore, the legislative history of the Act shows that Congress not only considered, but specifically rejected as being too restrictive, a requirement that the Secretary have probable cause for believing a violation of the Act has been or was about to be committed prior to the issuance of subpoenas under the investigatory powers granted by the statute.

H.R. 8400, 86th Cong., 1st Sess., the so-called Landrum-Griffin bill,[3] the major portions of which were incorporated in the Reporting and Disclosure Act of

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[3] The number of the bill finally passed by the House was H.R. 8342, but prior to passage, the text of H.R. 8400 was substituted. See 105 Cong. Rec. 14518-20 (daily ed., August 13, 1959).

1959, originally provided in Section 601(a) (*History*, p. 671):[4]

> The Secretary shall, *when he has probable cause to believe that any person has violated any provision of this Act*, other than a provision of title I, make an investigation, and in connection therewith he may inspect such records and accounts as may be necessary to enable him to determine the facts relative thereto. [Emphasis added.]

The original Kennedy-Ervin bill, S. 505, 86th Cong., 1st Sess., which was referred to the Senate Committee on Labor and Public Welfare, similarly provided in Section 106(c) (*History*, p. 45):

> The Secretary shall have the power and is directed, *when he has probable cause to believe that any person or labor organization has violated any provision of this title*, to make an investigation and in connection therewith he may enter such places and inspect such records and accounts as may be necessary to enable him to determine the facts relative thereto. * * * [Emphasis added.]

However, S. 1555, 86th Cong., 1st Sess.,[5] which was

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[4] The text of H.R. 8400, as well as of all of the other portions of the legislative history referred to in this brief is included in volumes I and II of the *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, published by the National Labor Relations Board (United States Government Printing Office, 1959). Volume I covers pages 1-967 and Volume II, pages 968-1927. They will be cited as "*History*, p. ——".

[5] S. 1555, incorporating 46 Committee amendments to S. 505, was introduced by Senator Kennedy and referred to the Committee on Labor and Public Welfare on March 25, 1959. See 105 Cong. Rec. 4618 (daily ed., March 25, 1959).

finally reported to the Senate by that Committee, contained the following language in Section 106(c) with respect to the investigatory powers of the Secretary of Labor (*History*, p. 356):

> The Secretary shall have power and is directed *when he believes it necessary* in order to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation authorized by this Act (except amendments made by this Act to other statutes), to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. * * * [Emphasis added.]

From this it can be seen that the bill as reported to the floor of the Senate, and as passed by the Senate, deleted the requirement of a showing of probable cause originally contained in S. 505, as referred to committee.

How this change came about is made clear in the statement of minority views which accompanied the Committee Report on S. 1555 (S. Rept. No. 187, 86th Cong., 1st Sess.). After a discussion of what it thought were shortcomings of S. 1555, the minority listed in Appendix A to their views certain amendments proposed by them which has been adopted by the Committee and inserted in that bill (S. Rept. No. 187, pp. 88, 91 (*History*, pp. 484, 487)). Concerning the deletion of the probable cause requirement, one of the minority recommendations adopted by the Committee, the minority report stated (p. 487):

> On the surface, the term "probable cause" would appear to give the Secretary all the investigatory power that he needed. But the words "probable cause" would throw a monkey wrench into the Secretary's investigatory machinery. Probable cause means more than mere suspicion that the act has been violated. To have probable cause, a person must have such evidence as would lead the ordinary prudent man to believe that the act has been violated. Consequently, every time he commenced an investigation the Secretary could be dragged into court until the question of probable cause had been decided. Under nearly every statute requiring the filing of reports, such as the Internal Revenue Act and the Fair Labor Standards Act, the Administrator can conduct "spot check" investigations unhampered by the "probable cause" requirement. Our amendment rewrites this section to give the Secretary investigatory power when he believes it necessary in order to determine whether a violation has occurred or is about to occur.

After it passed the Senate, S. 1555 was sent to a Conference Committee, and the Committee adopted the Senate version which did not contain the probable cause requirement (*History*, p. 940). The only change by the Conference Committee was that the investigation authority was made permissive rather than mandatory.

We submit that this legislative history conclusively demonstrates that Congress thought it had dispensed with the requirement of showing probable cause. And, as we have already seen, there is nothing in the terms of Section 601 which would preclude giving effect to

the plain legislative purpose. It cannot be maintained that the Secretary must make a preliminary showing of a "basis" for believing that the Act has been or is about to be violated, or any other showing that he possesses information which requires an inquiry into petitioners' compliance with the statute.

b. If the petitioners are disclaiming a requirement akin to probable cause, then the "reasonable basis" for requiring the particular records and information sought is patently disclosed—indeed, explicitly stated—on the face of the subpoena, which not only describe the records as those containing any basic "information or data on matters required to be reported", but further specify that the purpose was to verify particular reports, *i.e.*, information and data "from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secretary of Labor * * * may be verified, explained or clarified and checked for accuracy and completeness, in connection with all items referred to or listed in such report and all items omitted or excluded therefrom which are relevant thereto and are required to be included in said reports * * *." (R. 8a, 9a-10a).

Petitioners could not have been informed in plainer terms that the purpose of the investigation was to determine whether they were violating or about to violate the statute, and they cannot suggest that this purpose was not an authorized one. Section 601 of the Act, in terms, (1) charges the Secretary with the responsibility of determining whether any person had violated or is about to violate any provision of the

statute, and (2) confers upon him the power, in connection with this determination, to make an investigation "when he believes it necessary." The Section also empowers him to require by subpoena the production of all documentary evidence relating to the matter under investigation. It is clear that, having fully apprised the petitioners and the district court that he sought the records in order to carry out his statutory obligation to determine whether a violation of the Act had occurred or was about to occur, the Secretary did all that the Act required of him.

The petitioners argue that the subpoenas were "so broad as to constitute a complete seizure of the books and records of the union" (Pet. 7). However, there can be no question as to the relevancy of the subpoenaed matter—in fact, it is difficult to see how the Secretary could make his determination without it. The "basic information and data" underlying these required reports are necessary to a determination of whether the records are complete and accurate (in compliance with Section 201 of the Act) and of whether the records have been retained (in compliance with Section 206 of the Act). The material called for was nothing more nor less than the records and books which the Act explicitly requires the petitioners to keep, and on the basis of which petitioners had submitted reports to the Secretary. Under these circumstances, it cannot be said that the subpoenas were too "broad" or that the Secretary was not acting "reasonably." [8]

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[8] The petitioners rely upon *Montship Lines, Ltd.* v. *Federal Maritime Board*, (Pet. App. 23a-11a), decided June 30, 1961,

2. It is not clear to what extent petitioners may be renewing their argument below that enforcement of the subpoenas would violate the Fourth Amendment. However, this Court's decisions in *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186, and *United States* v. *Morton Salt Co.*, 338 U.S. 632, are dispositive of any contention based upon that Amendment.

Oklahoma Press concerned a subpoena *duces tecum* issued by the Wage and Hour Administrator pursuant to Section 11(a) of the Fair Labor Standards Act of 1938, 29 U.S.C. 211, which is similar to Section 601 of the Reporting and Disclosure Act. The subpoena was resisted on the ground that there was no showing of probable cause as to either coverage or violation of the Act, and that, consequently, the Administrator was on a "fishing expedition" forbidden by the Fourth Amendment. This Court held, however, that there

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by the Court of Appeals for the District of Columbia Circuit, for their argument that the subpoenas here were too broad. However, that case does not aid the petitioners, for there the court refused to enforce an order of the Federal Maritime Board on the sole ground that the agency had failed to specify any purpose for the investigation sought to be advanced by the production of the documents requested. In sharp distinction to *Montship*, the subpoenas in the instant case stated the purpose of the investigation. They said explicitly that the records and documents sought were required by the Secretary of Labor in the execution of his statutory duty to determine whether any person has violated or is about to violate any provisions of the Labor-Management Reporting and Disclosure Act. The subpoenas further stated that the records were required to verify and check for accuracy and completeness reports previously submitted by petitioners in accordance with the reporting provisions of the Act.

need be no such showing in order to satisfy the requirements of the Fourth Amendment (327 U.S. at 208-209):

> It is not necessary, as in the case of a warrant, that a specific charge or complaint of violation of law be pending or that the order be made pursuant to one. It is enough that the investigation be for a lawfully authorized purpose, within the power of Congress to command. This has been ruled most often perhaps in relation to grand jury investigations, but also frequently in respect to general or statistical investigations authorized by Congress. The requirement of "probable cause, supported by oath or affirmation," literally applicable in the case of a warrant, is satisfied in that of an order for production by the court's determination that the investigation is authorized by Congress, is for a purpose Congress can order, and the documents sought are relevant to the inquiry. * * *

Further, it was stated that an agency may perform an investigative function which is "essentially the same as the grand jury's, or the court's in issuing other pre-trial orders for the discovery of evidence, and is governed by the same limitations." Accordingly, the Court applied the rule it had previously laid down with respect to a grand jury investigation —that the inquiry must not be "limited * * * by the forecasts of the probable result of the investigation" (327 U.S. at 216).[7]

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[7] The *Oklahoma Press* holding was predictable in view of the Court's earlier holding in *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, that, under the Walsh-Healey Public

Other observations were made by this Court which are particularly pertinent to the enforcement of the Labor-Management Reporting and Disclosure Act by the Secretary of Labor (327 U.S. at 213):

> On the other hand, [the company's] view, if accepted, would stop much if not all of investigation in the public interest at the threshold of inquiry and, in the case of the Administrator, is designed avowedly to do so. This would render substantially impossible his effective discharge of the duties of investigation and enforcement which Congress has placed upon him. And if his functions could be thus blocked, so might many others of equal importance.

Four years later, in *United States* v. *Morton Salt Co.*, 338 U.S. 632, the Court reiterated its holding in *Oklahoma Press*. The Federal Trade Commission had ordered the company to cease specified practices and the district court ordered compliance with the order. The decree required periodic compliance reports by the company. The Commission subsequently ordered additional and highly particularized reports which were to include a complete statement of price, terms, and conditions of sale after a designated time. The company refused to submit the additional reports and its refusal was upheld by the district court and court of appeals. In this Court, the company argued that the Commission was engaged in a mere fishing expedition to see if it could turn up evidence of guilt.

Contracts Act, there need be no showing, to support a subpoena, that there was probable cause for believing the petitioner was within the coverage of the Act.

In the course of its opinion, the Court responded (338 U.S. at 641, 652):

> We will assume for the argument that this is so * * *.
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> * * * *
>
> * * * Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless, law-enforcement agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and public interest.

The Court also stressed that the administrative power of inquisition is "more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence, but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not" (338 U.S. at 642-643).

In sum, the *Oklahoma Press* and *Morton Salt* cases have erased, as a constitutional matter, any probable cause or similar requirement in circumstances like those involved here. For subsequent decisions reaffirming those holdings, see *Civil Aeronautics Board* v. *Hermann*, 353 U.S. 322, and *Federal Trade Commission* v. *Crafts*, 355 U.S. 9.[8]

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[8] The petitioners attempt to distinguish the *Oklahoma Press* and *Morton Salt* cases on the ground that those cases involved corporations, whereas the unions here are unincorporated associations. However, in *United States* v. *White*, 322 U.S. 694, this Court rejected any such distinction; it is also clear that the *Oklahoma Press* and *Morton* rulings would apply to individual employers and individual businessmen. See also *Rodgers* v. *United States*, 138 F. 2d 992 (C.A. 6).

3. Petitioners insist that the reporting provisions of the Act represent an attempt by Congress to regulate internal union affairs unrelated to collective bargaining and that, since the Commerce Clause of the Constitution (Article I, Section 8, Clause 3) gives Congress no such power, the Act is unconstitutional. The basic premise of their argument is that regulation of internal union affairs has no, or at most only tangential, connection with the regulation of interstate commerce. The express findings of Congress, which were at the foundation of its enactment of the Reporting and Disclosure Act, completely refute any such assumption.

Section 2 of the Act, 29 U.S.C. (Supp. I) 401, is a Congressional declaration of the findings, purposes and policy upon which the Labor-Management Reporting and Disclosure Act is based. In Section 2(a), Congress found that "in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights," not only to "bargain collectively", but to "otherwise engage in concerted activities for their mutual aid or protection." Congress also noted that "the relations" generally, rather than merely collective bargaining, "between employers and labor organizations and the millions of workers they represent have a *substantial impact on the commerce* of the Nation." [Emphasis added]. It is then declared that "in order to accomplish the objective of a free flow of commerce * * * labor organizations" must "adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they